

# AGREED RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921

No. 38

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CHARLES F. HUNT, EXECUTOR OF THE ESTATE OF  
WILLIAM WEIGHEL, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

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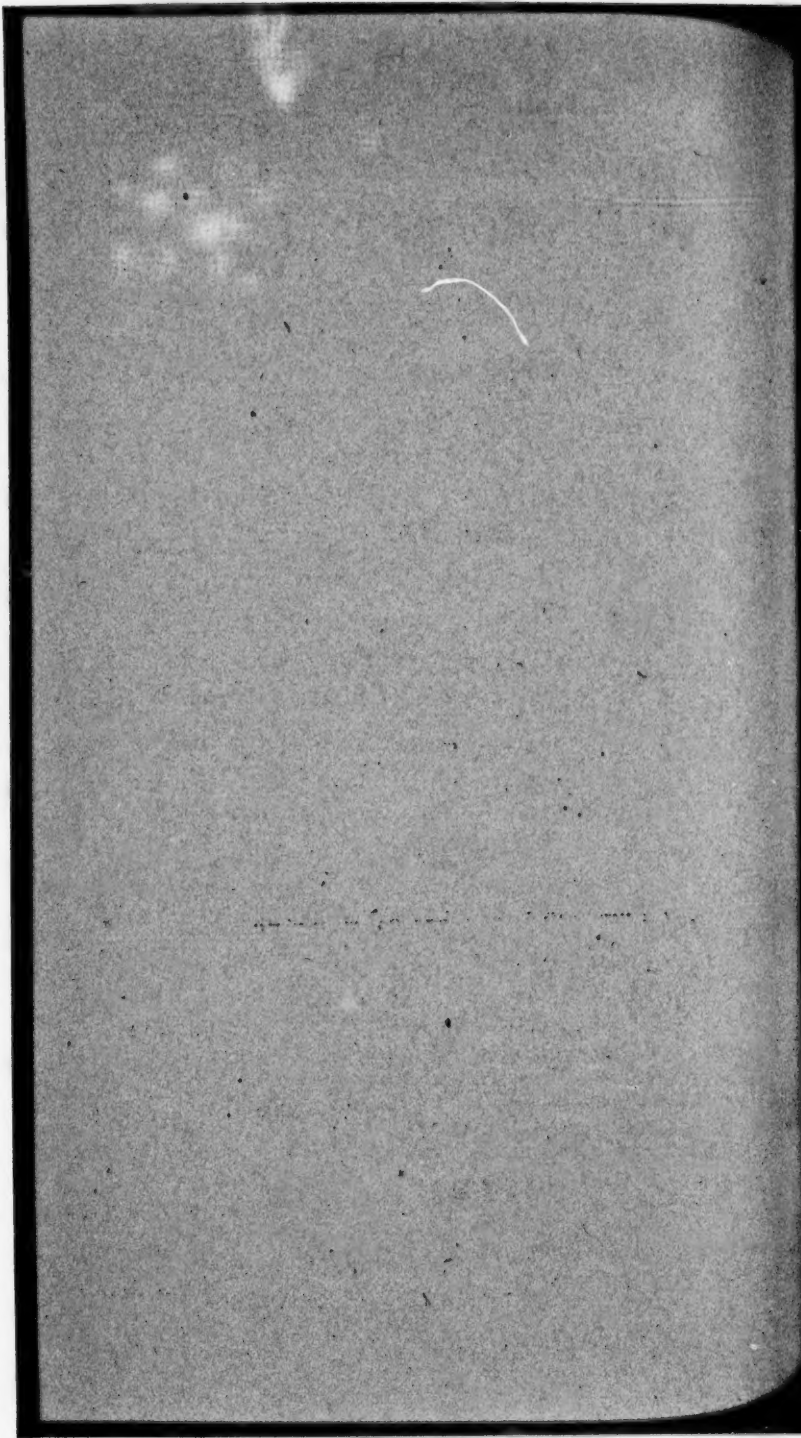
APPEAL FROM THE COURT OF CLAIMS.

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RECORD FILED APRIL 27, 1922.

AGREED RECORD FILED AUGUST 4, 1922.

(27,838)



(27,636)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 313.

CHARLES F. HUNT, EXECUTOR OF THE ESTATE OF  
WILLIAM WEIGHHEL, DECEASED, APPELLANT,

*vs.*

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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I. *Petition—Exhibits A, B, C, D, E, F.*

Filed April 18, 1901.

In the Court of Claims.

No. 22532.

WILLIAM WEIGHEL, Claimant,

v.

THE UNITED STATES.

*Petition.*

Filed April 18, 1901.

To the Honorable the Court of Claims:

The petition of William Weighel represents:

1. That he is a citizen of the United States and a resident of the city of San Francisco, in the State of California.

2. That on September 15, 1894, the Postmaster-General of the United States published an advertisement inviting proposals for covered regulation wagon mail messenger, transfer, and mail station service, at Cincinnati, Ohio, Cleveland, Ohio, Columbus, Ohio, Toledo, Ohio, Chicago, Illinois, and several other cities, from July 1, 1895, to June 30, 1899, in which advertisement the said service in Chicago was designated as Route No. 235,001. A copy of such portions of said advertisement as relate to the service in said city of Chicago is hereto attached, as a part hereof, and marked "Exhibit A."

3. That your petitioner was the lowest bidder for said service on Route 235,001 in said city of Chicago, and entered into a contract for the performance of the same, with the Postmaster-General, from July 1, 1895, to June 30, 1899, said contract being in the form and upon the conditions as prescribed in said advertisement. See Exhibit "A" herewith.

4. Your petitioner further shows that at the time when said advertisement inviting bids for contracts for carrying the mails by regulation wagons on Route 235,001 in the said city of Chicago was issued, and at the time when the said contract with your petitioner was so made, and at the beginning of said contract term, to wit, on the first day of July, 1895, and during the continuance of said contract term, there were in existence in said city of Chicago, by direction and order of the Postmaster-General, four certain street railway mail routes, known and designated respectively as route number

335,003, from the city post-office to Station "E," on which route the mails were carried by the West Chicago Street Railroad Company; route number 335,004, from the city post-office to Station "G," on which route the mails were carried by the West Chicago Street Railroad Company; route numbered 335,005, from the city post-office to Station "B," on which route the mails were carried by the North Chicago Street Railroad Company, and route numbered 335,006 (previously being numbered 135,136), from the city post-office to Station "N," on which route the mails were carried by the Chicago City Railway Company.

5. Petitioner further shows that along and on said Route 335,003 there were sub mail stations known and designated as Stations "C," "D," and "E," on Route 335,004, Stations "A" and "B," and on Route 335,006 (previously 135,136), Stations "L," "M," and "N." That the mail sent out from the city post-office to be delivered at and into these various stations was carried previous to November, 14, 1895, from said city post-office to the said city railways at the nearest practicable point on such railways, by the regular employees of the Post-Office Department, and were likewise delivered from the cars of said railways into said stations by such employees; and in like manner the mail to be delivered from one station to another and from the various stations to the city post-office, and other points, was carried from the respective stations to the cars, and from the cars to the city post-office, and from the cars to the station or stations and other points where the same was to be delivered, by the employees of the Post-Office Department.

6. By the terms of the advertisement aforesaid inviting bids for carrying the mail on Route No. 235,001, bidders were directed to inquire of the postmaster, at the city where the service was to be performed, for information relative to the service and its requirements. In pursuance of this instruction, your petitioner, before making the bid as aforesaid, did make inquiry of the then postmaster of said city of Chicago, and, among other inquiries, asked him if any of the service which was then being performed by the employees of the Post-Office Department in carrying the mail to and from the street railway cars aforesaid and the city post-office and the substations, all as above set forth, would thereafter and during the contract term from July 1, 1895, to June 30, 1899, be required of the party or person who should, during such term, be the contractor on said Route 235,001, and was assured by the said postmaster that no such service would be required of the said contractor.

And your petitioner further declares that before making his said bid he learned from the contractor on said Route 235,001 for the contract term from July 1, 1891, to June 30, 1895, that he had been requested by the officers of the Post-Office Department to take up and perform the said service of carrying the mail between the city post-office and the said street cars, and said cars and the said substations along the several street car routes as above described, but that he had refused to do so on the ground that it was not within the terms of his contract by which he engaged to perform

the covered regulation wagon service on said Route 235,001, and upon such refusal he, the said contractor, had not been required to perform the said service and that the Department continued to perform it with its own employes. And pursuant to the assurance made your petitioner by the postmaster of the city of Chicago as herein stated, and the information gathered from the former contractor, as aforesaid, and the information set out in the said advertisement of September 15, 1894, your petitioner made the said bid to perform the service on said Route 235,001.

7. That on or about the 14th day of November, 1895, the Postmaster-General made an order directing your petitioner to perform service as follows (or more frequently, if necessary), without additional pay, alleging the same to be in accordance with the terms of petitioner's contract, to wit: To make twelve trips each week day and three trips each Sunday from the general post-office in said city of Chicago to West Chicago Street Railway at Clark and Madison streets, and the same number of trips from said last-named point back to said general post-office; also twelve trips on each week day and three trips on Sundays from said general post-office to North Chicago Street Railway at Clark and Monroe streets, and the same number of trips from said last-named point back to said general post-office; also twelve trips on each week day and three trips on Sundays from said general post-office to West Chicago Street Railway at La Salle and Madison streets, and the same number of trips from last-named point back to said general post-office; also ten trips each week day and three trips on Sundays from Station "C" to the West Chicago Street Railway at Central avenue and Madison street, and the same number of trips from the last-named point back to Station "C;" also ten trips each week day and three trips each Sunday from Station "D" to West Chicago Street Railway at western avenue and Madison street, and the same number of trips from the last-named point back to Station "D;" also ten trips on week days and three trips on Sundays from Station "E" to West Chicago Street Railway at Fortieth and Madison streets, and the same number of trips from the last-named point back to Station "E;" also ten trips each week day and three trips on Sundays from Station "F" to West Chicago Street Railway at Carpenter and Milwaukee avenues, and the same number of trips from the last-named point back to Station "F;" also ten trips each week day and three trips on Sundays from Station "G" to West Chicago Street Railway at Milwaukee and Western avenues, and the same number of trips from the last-named point back to Station "G;" also ten trips on each week day and three trips on Sundays from Station "A" to North Chicago Street Railway, North Clark and Oak streets, and the same number of trips from the last-named point back to Station "A;" also ten trips on each week day and three trips on Sundays from Station "B" to North Chicago Street Railway at Diversey street and Sheffield avenue, and the same number of trips from the last-named point back to Station "B;" all of which is duly set out in the copy of said order hereto attached and marked Exhibit "B" and made a part hereof.

8. Your petitioner further states to the Court that on or about the 12th day of May, 1896, he received an order in general terms from J. A. Montgomery, the Superintendent of United States Mails at the city of Chicago, directing that on the 18th day of May, 1896, he, your petitioner, should take up the service of carrying the mails to and from the said city post-office and the cars on Cottage Grove avenue,

and to and from Stations "L," "M," and "N," and said cars, 6 the mails being at that time carried on said avenue by the Chicago City Street Railway, and the route being known and designated as route number 135,136 (subsequently numbered 335,006), which said order is hereto attached as Exhibit "C" and made a part hereof.

And that on or about the 27th day of May, 1896, he received through the said Superintendent of Mails a further order from the Postmaster-General signed by G. F. Stone, Acting Second Assistant Postmaster-General, directing your petitioner to make nine trips each week day and four trips on Sundays from Station "L" to the Chicago City Railway, and the same number of trips from the latter-named point back to Station "L;" also to make nine trips each week day and four trips on Sundays from Station "M" to the Chicago City Railway, and the same number of trips from the last-named point back to Station "M;" also to make nine trips each week day and four trips Sundays from Station "N" to the Chicago City Railway, and the same number of trips from the last-named point back to Station "N;" all of which is duly set out in the copy of said order hereto attached and marked Exhibit "B" and made a part hereof.

9. Your petitioner further shows that on or about the 27th day of February, 1897, the Postmaster-General made an order, by the Acting Second Assistant Postmaster-General, directing your petitioner to carry the mail eleven trips on each week day and five trips on Sundays from Station "U" to the West Chicago Street Railway, and the same number of trips from the said last-named point back to Station "U;" also to make eleven trips each week day and five trips on Sundays from the West Chicago Street Railway, at the junction of Madison and State streets, to the Chicago City Railway, at the junction of Madison and Wabash avenues, and the same 7 number of trips from the last-named point back to the West Chicago Street Railway, at the junction of Madison and State streets; all of which is duly set out in the copy of said order hereto attached and marked Exhibit "E" and made a part hereof.

10. That when the aforesaid orders were made, to wit, on the 14th day of November, 1895, the 12th day of May, 1896, the 27th day of May, 1896, and the 27th day of February, 1897, to carry the mail between the city post-office and points on the several street railways, and between the mail stations "A," "B," "C," "D," "E," "F," "G," "L," "M," "N," and "U," and the said railways, the said mails were being carried over said railways, under contracts by the several railway companies with the Postmaster-General, as follows: the mails supplying stations "C," "D," and "E," on and over the West Chicago

Street Railway, and over route numbered 335,003; the mails supplying stations "F," "G," and "U," on and over a line of the same railway, the route being numbered 335,004; the mails supplying stations "A," and "B," on and over the North Chicago Street Railway, the route being numbered 335,005; and the mails supplying stations "L," "M," and "N," on and over the Chicago Street Railway, the route being numbered 335,006.

11. That, upon receiving the said several orders stated in the last paragraph, your petitioner protested against the performance of said service as not being within the terms and conditions of his aforesaid contract to perform the Covered Regulation-Wagon Mail-Messenger, Transfer, and Mail Station Service on route No. 235,001 for the said term from July 1, 1895, to June 30, 1899, and advised the United States, through its proper Department, that for the performance of such service he would claim and demand reasonable compensation.

12. That in pursuance of said several orders and under the terms of the said several protests, your petitioner performed all of said additional service and made all the additional trips hereinbefore set forth, although such services were not within the terms of his contract aforesaid, and they were fairly and reasonably worth, over and above all just credits and offsets, the sums hereinafter set forth in your petitioner's Bill of Particulars, hereto attached as Exhibit "F" and made a part hereof; and your petitioner avers that said claim has not been assigned or transferred by him, and that all of said service was received and accepted by the United States, and by reason thereof there arises on the part of the United States an implied promise to pay your petitioner the reasonable worth of the same.

13. And your petitioner therefore prays judgment against the United States for the sum of \$52,327.

WILLIAM WEIGHEL,

By J. H. McGOWAN,

*Attorney for Petitioner.*

J. H. McGOWAN,

1419 F St. N. W., Washington, D. C.,

*Attorney for Petitioner.*

DISTRICT OF COLUMBIA,

*City of Washington, ss:*

Before me, the undersigned, a notary public, in and for the said District and city, personally appeared J. H. McGowan, the attorney for the claimant therein, who being duly authorized to verify the petition, and who being duly sworn, deposes and says that he has read the foregoing petition by him subscribed, and is acquainted with the contents thereof; that the matters and things therein contained and stated are true, as he verily believes; that the claimant is

justly entitled, as shown in said petition, to the moneys therein  
 9 claimed to be due and owing to him from the United States,  
 after allowing all just credits and set-offs, and that to the best  
 of deponent's knowledge and belief no assignment or transfer of the  
 claim therein set forth, or any part thereof, or any interest therein,  
 has been made by the claimant to any one whomsoever or by any one  
 in his behalf.

J. H. McGOWAN,

Subscribed and sworn to before me this 5th day of March, A.  
 D. 1901.

[SEAL.]

ISAAC C. SLATER,  
*Notary Public.*

10-19

EXHIBIT A.

*Proposals for Covered Regulation Wagon Mail Messenger, Transfer,  
 and Mail Station Service.*

Post-Office Department,  
 Washington, D. C., September 15, 1894.

Proposals will be received at the contract office of this Department  
 until 4 P. M. of December 4, 1894, for carrying the mails of the  
 United States in the covered regulation wagons prescribed by the De-  
 partment, on the routes herein specified, being covered regulation  
 wagon mail messenger, transfer, and mail station service in the  
 cities hereinafter named, between the post-offices and steamboat  
 landings, between the post-offices and mail stations, and between  
 the several railroad stations, steamboat landings and mail stations, as  
 prescribed herein, for the term from July 1, 1895, to June 30,  
 1899, viz:

Cincinnati, Ohio,  
 Cleveland, Ohio,  
 Columbus, Ohio,  
 Toledo, Ohio,  
 Chicago, Ill.,

Detroit Mich.,  
 Milwaukee, Wis.,  
 Minneapolis, Minn.,  
 St. Paul, Minn.,  
 Kansas City, Mo.,

St. Louis, Mo.

Decisions announced on or before December 21, 1894.

Contracts to be returned to the Department, duly executed, within  
 thirty days from date of acceptance of proposals.

(Schedules the same as set forth in exhibit "A" of amended  
 petition and exhibits filed June 11, 1918, are omitted here.)

20

*Instructions to Bidders.*

1. The foregoing schedules show the service, August 15, 1894, as  
 near as can be stated. Bidders must inform themselves of the amount  
 and character of the service that will be required during the next  
 contract term.

The statements of probable additional service that may be necessary on the routes under this advertisement are given so that bidders may be as fully advised as possible of the amount of service likely to be required. It will not, however, limit the liability of the contractors to perform all service that may become necessary, without  
21 additional pay.

2. The contractor under this advertisement will be required to perform, without additional compensation, any and all new or additional service that may be ordered from July 1, 1895, or at any time thereafter during the contract term, whether between post-offices and railroad stations, between post-offices and steamboat landings, between post-offices and mail stations, or between the several railroad stations, steamboat landings, and mail stations, now established or that may hereafter be established, whether caused by the establishment of new or by change of site of existing post-offices, railroad stations, steamboat landings, or mail stations within said cities, or caused by the alteration of the routes made necessary for any other reason. Bids must be made with this distinct understanding and must name the amount per annum for the whole service and not by the trip.

3. There will be no diminution of compensation for partial discontinuance of service, or increase of compensation for new, additional, or changed service that may be ordered during the contract term; but the Postmaster-General may discontinue the entire service on any route whenever the public interest, in his judgment, shall require such discontinuance, he allowing a full indemnity to the contractor, one month's extra pay.

4. The Postmaster-General may annul a contract for repeated failures; for violating the postal laws; disobeying the instructions of the Post-Office Department; for refusing to discharge a driver or any person having charge of the mail when required by the Department; for transmitting commercial intelligence of matters which should go by mail contrary to the stipulations herein, or for transporting persons so engaged; whenever the contractor shall become  
22 a postmaster, assistant postmaster, clerk in a post-office, or member of Congress, and whenever, in the opinion of the Postmaster-General, the service cannot be safely continued or the laws maintained on the route.

Fines will be imposed for neglect of duty.

5. The Postmaster-General may, in his discretion, continue in force, beyond its express terms for a period not exceeding six months, any contract made under this advertisement until a new contract with the same or other contractors shall be made.

6. The distances given are believed to be substantially correct, but no additional pay will be allowed should they be greater than herein stated. Bidders must inform themselves as to the distances, the running time, the weight of the mails, the condition of hills, streets, toll bridges, ferries, and obstructions of all kinds whereby expense



may be incurred, and as to the probable increase, additional service, or changes likely to be rendered necessary. Claims for additional pay based upon such grounds, or for alleged mistakes or misapprehensions as to the service required, or for bridges destroyed, or ferries discontinued, can not be considered.

7. Foreign mails in transit across the territory of the United States shall, within the meaning of this advertisement, be deemed and taken to be mails of the United States.

8. The transfer service shall include the conveyance of all post-office supplies arriving for the city post-office or for transit through the city.

9. Contractors will be required to convey on the driver's seat of each wagon, whenever necessary, one railway post-office clerk, a substitute, or a messenger.

10. Drivers must be over sixteen years of age, of good  
23 moral character, and able to read and write the English language. They must take the oath required by law, and must wear the prescribed cap or hat.

11. All service must be performed in regulation wagons constructed in accordance with the plans and specifications adopted by the Department September 1, 1891. There are four sizes of regulation wagons, viz., the large two-horse wagon, the medium two-horse wagon, the large one-horse wagon, and the small one-horse (or pony) wagon. All of these wagons are to be built with closed bodies. In a few exceptional cases where, in the judgment of the Department, regulation wagons are not necessary, permission may be given to perform a limited portion of the service either in one-horse two-wheel carts or in push carts, built according to plans and specifications furnished by the Department; but these carts must not be used in the performance of service unless specially authorized by the Second Assistant Postmaster-General. Full particulars as to style and construction of wagons required may be obtained on application to the Second Assistant Postmaster-General, Washington, D. C. The wagons must be kept painted and varnished in a thorough manner and ornamented according to specifications. They must be frequently washed and kept clean and in good condition. Only first-class wagons of the prescribed pattern will be accepted. No lettering will be permitted on any part of the wagons other than such as is required by the specifications. The horses used must be suitable for the work, presenting a creditable appearance, and be in first-class condition at all times.

12. When mails are delayed in arrival, wagons must be kept at the depots or landings until the arrival of such mails, and the same be conveyed to the post-office without detention. Except in cases of accident, wagons containing mail must not be opened, or the mails therein contained while in transit. The mails must be carried inside



4 of the wagons and not on the outside or on the seat with the driver, and in no case shall any person be allowed to ride inside of the wagon containing mail.

13. The equipment of the contractor shall be subject to frequent inspections, and the refusal or failure of any contractor to keep his wagons, horses, and harness in good order and appearance, or to furnish proper drivers, so as to perform the service in a style creditable to the Department, shall be sufficient cause for the annulment of his contract and the reletting of the service at his expense.

14. Specifications for cap and hat: Cap—To be of all-wool blue flannel of good quality, three and one-fourth inches high; solid leather fronts one and three-fourths inches deep, with one small regulation P. O. D. button on each side, a silver wreath in front inclosing the words "U. S. Mail," and to have one oiled linen cover. Hat—From June 16 to September 15 of each fiscal year, in lieu of the cap, a straw hat with rim not to exceed three and one-half inches in width and a crown not to exceed four inches in height may be worn. A silver wreath inclosing the words "U. S. Mail" shall be placed on the front of the hat. In severe winter weather the drivers for the contractor will be permitted to wear warm woollen caps of a uniform appearance with regulation badge on front.

15. The wagons, horses, harness, and drivers are to be at all times subject to the approval and control of the postmaster, and the mails are to be taken from and delivered into the post-offices, mail stations, steamboats, and cars at such points and at such hours, under his direction, approved by the Postmaster-General, as will secure proper dispatches and connections, and at the contractor's expense for tolls and ferriage.

16. The number of wagons required must be sufficient, in the opinion of the postmaster, for the prompt and proper performance of the service. The postmaster will also determine which of the sizes of the several regulation wagons mentioned herein will be necessary.

17. The contractor will be required to provide and keep on hand a sufficient number of extra wagons to take the place of those which may be temporarily disabled, delayed, waiting for trains, or withdrawn from service for repairs, or required by the increase of service, so that the service shall always be promptly performed in regulation wagons.

18. Every proposal must be accompanied by a bond, with two or more sureties, approved by the postmaster, and in cases where the amount of the bond exceeds five thousand dollars (\$5,000) the approval must be by a postmaster of the first, second, or third class.

19. Sureties on the bond of a bidder must take an oath before an officer qualified to administer oaths that they are the owners of real estate worth, in the aggregate, a sum double the amount of said bond, over and above all debts due and owing by them, and all judg-

ments, mortgages, and executions against them, after allowing all exemptions of every character whatever. A married woman will not be accepted as a surety, either on the bond of a bidder or upon a contract. Accompanying the bond of a bidder, and as a part thereof, shall be a statement of the sureties under oath, showing the amount of real estate owed by them, brief descriptions thereof, and its probable value, where it is situated, and in what county and State the record evidence of their title exists. Any surety who swears falsely to this statement is deemed by the law guilty of perjury, and is punishable as is prescribed by law for that crime.

20. There should be but one route bid for in a proposal. Consolidated or combination bids ("proposing one sum for two or more routes") cannot be considered.

21. Bidders are cautioned to forward their proposals in time to reach the Department, or to file them, by the day and hour named in this advertisement, as bids received after that time will not be considered. If sent by mail or express, ample time should be allowed for their transit, as they cannot be deemed to be received at the Department until actually delivered at the contract office; neither can bids be considered which are without bond, oath, or certificate required by section 245, act of June 23, 1874, and section 246, act of August 11, 1876. No withdrawal of a bid will be allowed unless the withdrawal is received twenty-four hours previous to 4 P. M., December 4, 1894.

22. No contract for carrying the mail shall be made with any person who has entered, or proposed to enter, into any combination to prevent the making of any bid for carrying the mail, or who has made any agreement, or given or performed, or promised to give or perform, any consideration whatever to induce any other person not to bid for any such contract.

23. In case of failure of the accepted bidder to execute a contract within the prescribed time, or of the abandonment of service during the contract term, the service will be relet at the expense of the failing bidder or contractor, and any accepted bidder who shall wrongfully refuse or fail to enter into contract in due form, and to perform the service prescribed in his proposal, may be deemed guilty of a misdemeanor, and on conviction thereof be fined and imprisoned therefor.

24. The Postmaster-General reserves the right to suspend the award of contract on any route for a period of not exceeding thirty days after the date fixed in this advertisement, with a corresponding allowance of time for the execution of contract, and to reject all bids on any route whenever in his judgment the interests of the service require it; and also to disregard bids of failing contractors and bidders and also disregard bids accompanied by bonds on which there appears as surety the name of a person who has been declared a failing contractor or bidder, or been barred from bidding for any reason whatever.

25. Postmasters are cautioned, under penalty of removal, not to approve the bond of any bidder before the proposal is completed and the bond is signed by the bidder and his sureties, and not until entirely satisfied of the sufficiency of the sureties. They are also cautioned not to divulge to anyone the amount of any proposal certified to them. Doing so will be sufficient cause for their removal.

26. No postmaster, assistant postmaster, or clerk employed in any post-office shall be a contractor, or concerned in a contract for carrying the mail.

27. Bidders are requested to use the blanks for proposals furnished by the Department, which may be obtained at the post-office on each route herein advertised. For information relative to the service and its requirements, bidders are requested to supply the postmaster at the city where the service is to be performed.

28. Proposals should be inclosed in envelopes, sealed, and superscribed "Proposals for covered regulation-wagon mail-messenger, transfer, and mail-station service, City of —," and addressed to the Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.

The accepted bidder will be required to execute a contract in the following form.

[Form omitted, being the same as the executed contract copy of which is attached to amendment of plaintiff's amended petition.]

### EXHIBIT B.

Washington, D. C., November 14, 1895

Sir: You are informed that the following order has this day been made in regulation wagon route No. 235,001, Chicago, Illinois:

"Require contractor to perform service as follows (or more frequently, if necessary) without additional pay, in accordance with the terms of his contract."

(Schedule omitted being the same as set forth in like exhibit of amended petition and exhibits filed June 11, 1918.)

Permit the contractor to use regulation carts in the performance of this service whenever in the judgment of the postmaster at Chicago, Illinois, such carts can be used advantageously in the service.

Very respectfully,

G. F. STONE,

*Acting Second Assistant P. M. General.*

Mr. W. Weighel,

Care S. C. Ramage,

No. 409 B street N. E., Washington, D. C.

38

## EXHIBIT C.

May 12, 1896.

Mr. E. J. Travis,  
U. S. Mail Messenger,  
Chicago, Ill.

Sir: I beg to advise you that beginning Monday, the 18th, service between this office and Stations L, M, and N will be performed by Chicago and Cottage Grove ave. R. P. O. as per schedule herewith.

Kindly make the necessary arrangement to have this service begin at the central office and by transfers from Stations L, M, and N, beginning Monday morning.

Respectfully,

J. A. MONTGOMERY,  
*Supt. of Mails.*

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## EXHIBIT D.

Washington, D. C., May 27, 1896.

Sir: You are informed that the following order has this day been made on regulation wagon route No. 235,001, Chicago, Illinois:

"Require contractor to perform service as follows (or more frequently, if necessary) without additional pay, in accordance with the terms of his contract."

(Schedule omitted being the same as set forth in like exhibit of amended petition and filed June 11, 1918.)

Very respectfully,

G. F. STONE,  
*Acting Second Assistant P. M. General.*

Mr. Weighel,  
Care of E. J. Travis,  
No. 90 W. Congress St.,  
Chicago, Illinois.

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## EXHIBIT E.

Washington, D. C., February 27, 1897.

Sir: You are informed that the following order has this day been made:

"From March 3, 1897, require the contractor to perform services as follows (or more frequently, if necessary) without additional pay, in accordance with the terms of the contract."

(Schedule omitted being the same as set forth in like exhibit of amended petition and exhibits filed June 11, 1918.)

Very respectfully,

G. F. STONE,

*Acting Second Assistant P. M. General.*

Mr. W. Weighel,

Care of E. J. Travis,

No. 90 W. Congress St. Chicago, Ill.

41-45

EXHIBIT F.

Bill of Particulars in the matter of the claim of William Weighel against the United States as set forth in the foregoing petition. In the tables and statements below the letters G. P. O. stand for "General Post Office," and R. P. O. for "Railway Post-Office."

Sufficiently covered by Findings IV.

46

II. *History of Proceedings.*

On August 6, 1907, on motion made therefor and allowed by the Court "subject to objection by the Attorney General, or anyone interested" an amended petition in the name of Ezra J. Travis was filed.

On October 13, 1909, on motion made therefor and allowed by the Court, Messrs. McGowan, Serven & Mohun were substituted as attorneys of record on suggestion of the death of Jonas H. McGowan, the former attorney.

On June 15, 1900, the defendants filed a demurrer to the petition and amended petition.

On August 2, 1911, on motion made therefor, Messrs. Serven & Joyce, were substituted as the attorneys of record.

On February 13, 1912, claimant was granted leave in open court to withdraw and amend petition filed August 6, 1907 and to file an amended substitute petition. Said petition is as follows: Substitute petition for the amended petition filed August 6, 1907, filed February 13, 1912,

47     III. *Substituted Petition for the Amended Petition Filed August 6, 1907.*

Filed February 13, 1912.

In the Court of Claims of the United States.

No. 22532.

EZRA J. TRAVIS, Claimant.

v.

THE UNITED STATES.

*Substitute for the Amended Petition Filed August 6, 1907.*

To the Honorable the Court of Claims:

The petitioner, the said Ezra J. Travis, files this, his petition, as and for an amendment to the petition heretofore filed in this court, entitled William Weighel v. The United States, No. 22532.

1. Petitioner says that he is a citizen of the United States, and a resident of the city of New York, in the State of New York.

2. That on September 15, 1894, the Postmaster-General of the United States published an advertisement inviting proposals for covered regulation wagon mail messenger, transfer, and mail station service, at Cincinnati, Ohio; Cleveland, Ohio; Columbus, Ohio; Toledo, Ohio; Chicago, Illinois; and several other cities, from July 1, 1895, to June 30, 1899, in which advertisement the said service in Chicago was designated as Route No. 235,001. A copy of such portions of said advertisement as relates to the service in  
48     said city of Chicago was attached to the original petition herein, as a part thereof and marked "Exhibit A."

3. That William Weighel was the lowest bidder for said service on Route 235,001 in said city of Chicago, and entered into a contract for the performance of the same with the Postmaster-General, from July 1, 1895, to June 30, 1899, said contract being in the form and upon the conditions as prescribed in said advertisement.

4. Your petitioner further shows that at the time when said advertisement inviting bids for contracts for carrying the mails by regulation wagons on route 235,001 in the said city of Chicago was issued, and at the time when the said contract with said Weighel was so made, and at the beginning of said contract term, to wit, on the first day of July, 1895, and during the continuance of said contract term, there was in existence in said city of Chicago, by direction and order of the Postmaster-General, four certain street railway mail routes, known and designated respectively as route number 335,003,

from the city post-office to Station "E," on which route the mails were carried by the West Chicago Street Railroad Company; route number 335,004, from the city post-office to Station "G," on which route the mails were carried by the East Chicago Street Railroad Company; route numbered 335,005, from the city post-office to Station "B," on which route the mails were carried by the North Chicago Street Railroad Company, and route numbered 335,006 (previously being numbered 135,136), from the city post-office to Station "N," on which route the mails were carried by the Chicago City Railway Company.

5. Petitioner further shows that along and on said route 335,003 there were sub-mail stations known and designated as Stations "C," "D," and "E;" on Route 335,004, Stations "A" and "B;" and on Route 335,006 (previously 135,136) Stations "L," "M," and "N." That the mail sent out from the city post-office to be delivered at and into these various stations was carried previous to November 14, 1895, from said city post-office to the said city railways at the nearest practicable point on such railways, by the regular employees of the Post-Office Department, and was likewise delivered from the cars of said railways into said stations by such employees; and in like manner the mail to be delivered from one station to another and from the various stations to the city post-office and other points was carried from the respective stations to the cars and from the cars to the city post-office and from the cars to the station or stations and other points where the same was to be delivered, by the employees of the Post-Office Department.

6. By the terms of the advertisement aforesaid inviting bids for carrying the mail on Route No. 235,001, bidders were directed to inquire of the postmaster, at the city where the service was to be performed, for information relative to the service and its requirements. In pursuance of this instruction, before making the bid as aforesaid, said Weighel by himself and his agents did make inquiry of the then postmaster of said city of Chicago and, among other inquiries, asked him if any of the service which was then being performed by the employees of the Post-Office Department in carrying the mail to and from the street railway cars aforesaid and the city post-office and the sub-stations, all as above set forth, would thereafter and during the contract term from July 1, 1895, to June 30, 1899, be required of the party or person who should during such term, be the contractor on said Route 235,001, and was assured by the said postmaster that no such service would be required of the said contractor.

And your petitioner further declares that before making his said bid the said Weighel learned from the contractor on said Route 235,001, for the contract term from July 1, 1891, to June 30, 1895, that he had been requested by the officers of the Post-Office Department to take up and perform the said service of carrying the mail between the city post-office and the said street cars, and said cars and the said sub-stations along the several street car routes as above described, but that he had refused to do so on the

ground that it was not within the terms of the contract by which he engaged to perform the covered regulation wagon service on said Route 235,001, and, upon such refusal, he, the said contractor, had not been required to perform the said service and that the Department continued to perform it with its own employees. And pursuant to the assurance made said Weighel by the postmaster of the city of Chicago as herein stated, and the information gathered from the former contractor, as aforesaid, and the information set out in the said advertisement of September 15, 1894, he made the said bid to perform the service as follows (or more frequently, if necessary), without addi-

7. That on or about the 14th day of November, 1895, the Postmaster General made an order directing said Weighel to perform service as follows (or more frequently, if necessary), without additional pay, alleging the same to be in accordance with the terms of said original contract, to wit: To make twelve trips each week day and three trips each Sunday from the general post-office in said city of Chicago to West Chicago Street Railway at Clark and Madison streets, and the same number of trips from said last named point back to said general post-office; also twelve trips on each week day and three trips on Sundays from said general post-office to North Chicago Street railway at Clark and Monroe streets, and the same number

of trips from said last named point back to said general post-office; also twelve trips on each week day and three trips on Sundays from said general post-office to West Chicago Street Railway at La Salle and Madison streets, and the same number of trips from last named point back to said general post-office; also ten trips each week day and three trips on Sundays from Station "C" to the West Chicago Street Railway at Central avenue and Madison street, and the same number of trips from the last-named point back to Station "C," also ten trips each week day and three trips each Sunday from Station "D" to West Chicago Street Railway at Western avenue and Madison street, and the same number of trips from the last-named point back to Station "D;" also ten trips on week days and three trips on Sundays from Station "E" to West Chicago Street Railway at Fortieth and Madison streets, and the same number of trips from the last-named point back to Station "E;" also ten trips each week day and three trips on Sundays from Station "F" to West Chicago Street Railway at Carpenter and Milwaukee avenues, and the same number of trips from the last-named point back to Station "F;" also ten trips each week day and three trips on Sundays from Station "G" to West Chicago Street Railway at Milwaukee and Western avenues, and the same number of trips from the last named point back to Station "G;" also ten trips on each week day and three trips on Sundays from Station "A" to North Chicago Street Railway, North Clark and Oak streets, and the same number of trips from the last-named point back to Station "A;" also ten trips on each week day and three trips on Sundays from Station "B" to North Chicago Street Railway at Diversey street and Sheffield avenue, and the same number of trips from the last named



52 point back to Station "B;" all of which is duly set out in the copy of said order attached to the original petition herein and marked exhibit "B."

8. Your petitioner further states to the Court that on or about the 12th day of May, 1896, he received an order, in general terms, from J. A. Montgomery, the Superintendent of United States mails at the city of Chicago addressed to your petitioner as "U. S. Mail Messenger," directing that on the 18th day of May, 1896, he should take up the service of carrying the mails to and from the said city post-office and the cars on Cottage Grove avenue, and to and from Stations "L," "M," and "N," and said cars the mails being at that time carried on said avenue by the Chicago Street Railway, and the route being known and designated as route number 135,136 (subsequently numbered 335,006), which said order was duly attached to the petition of said Weighel, so numbered 22,532, and marked Exhibit "C."

And that on or about the 27th day of May, 1896, your petitioner received through the said Superintendent of mails a further order from the Postmaster-General, signed by G. F. Stone, Acting Second Assistant Postmaster-General, directing that nine trips be made each week day and four trips on Sundays from Station "L" to the Chicago City Railway, and the same number of trips from the latter named point back to Station "L;" also to make nine trips each week day and four trips on Sundays from Station "M" to the Chicago City Railway, and the same number of trips from the last-named point back to Station "M;" also to make nine trips each week day and four trips Sundays from Station "N" to the Chicago City Railway, and the same number of trips from the last-named point back to Station "N," all of which is duly set out in the copy of said order attached to the original petition and marked Exhibit "D;" said order being addressed to said Weighel in the care of your petitioner herein.

53 9. Your petitioner further shows that on or about the 27th day of February, 1897, the Postmaster-General made an order, by the Acting Second Assistant Postmaster-General, directing that the mail be carried eleven trips on each week day and five trips on Sundays from Station "U" to the West Chicago Street Railway, and the same number of trips from the said last-named point back to Station "U;" also to make eleven trips each week day and five trips on Sundays from the West Chicago Street Railway at the junction of Madison and State streets, to the Chicago City Railway at the junction of Madison and Wabash avenues, and the same number of trips from the last named point back to the West Chicago Street Railway at the junction of Madison and State streets; all of which was duly set out in a copy of said order attached to the petition of said Weighel and marked Exhibit "E."

10. That when the aforesaid orders were made, to wit, on the 14th day of November, 1895, the 12th day of May, 1896, the 27th day of

May, 1896, and the 27th day of February, 1897, to carry the mails between the city post-office and points on the several street railways, and between the mail stations "A," "B," "C," "D," "E," "F," "G," "L," "M," "N," and "U," and the said railways, the said mails were being carried over said railways under contracts by the several railway companies with the Postmaster-General as follows: The mails supplying stations "C," "D," and "E," on and over the West Chicago, Street Railway, and over route numbered 335,003; the mails supplying stations "F," "G," and "U," on and over a line of the same railway, the route being numbered 335,004; the mails supplying stations "A," and "B," on and over the North Chicago Street Railway, the route being numbered 335,005; and the mails supplying stations "L," "M," and "N," on and over the Chicago Street Railway, the route being numbered 335,006.

11. That, upon receiving the said several orders stated in the last paragraph, your petitioner protested against the performance of said service as not being within the terms and conditions of aforesaid contract with said Weighel, and advised the United States through its proper Department, that for the performance of such service a reasonable compensation would be claimed and demanded.

12. That in pursuance of said several orders, and under the terms of the said several protests, your petitioner performed all of said extra service and made all the extra trips hereinbefore set forth, although such services were not within the terms of the contract between the Postmaster-General and said Weighel, aforesaid, and they were fairly and reasonably worth, over and above all just credits and offsets, the sums set forth in said Weighel's Bill of Particulars, attached to his petition as Exhibit "F" and made a part hereof; and your petitioner avers that said claim was not assigned or transferred by said Weighel or by himself, and that all of said service was received and accepted by the United States, and by reason thereof there arises on the part of the United States an implied promise to pay your petitioner the reasonable worth of the same. Your petitioner prays the court that all the exhibits from Exhibit "A" to Exhibit "F," inclusive, attached to and made a part of the petition filed by said Weighel, may become a part of this, the substitute for the amended petition. (Reprinted herein, see pp. 133—168.)

13. That after the execution of the contract as set forth in the third paragraph of the petition herein, the said William Weighel did, to wit, on the 6th day of February, eighteen hundred  
55 and ninety-five, enter into a sub-contract with the aforesaid Ezra J. Travis, a resident of the city of Chicago, State of Illinois, whereby the said Ezra J. Travis agreed in consideration of the sum of \$70,000 per annum, to transport the mails on said Route 235,001, being covered regulation wagon Mail Messenger Transfer, and Mail Station Service at Chicago, from the 1st day of July, 1895, to June 30, 1899, inclusive, at such times, and upon such schedules, as the Postmaster-General might direct, and in full compliance with the postal laws and regulations, and subject to, and

in compliance with all the requirements of the United States as party of the first part in its aforesaid contract with the said William Weighel. And that in and by the terms of said subcontract, the said Travis, for the faithful performance of the same, did duly bind himself in the sum of \$100,000, and agreed to assume the liability for all fines and deductions imposed upon the said William Weighel, under the terms of his said contract with the United States, for failures and delinquencies in the performance of the service on said Route 235,001, in said City of Chicago for the said term as above set forth, all as duly set out in said contract between the United States and said Weighel. The original of said subcontract is attached hereto and made a part of this substitute for the amended petition (Exhibit 1).

Claimant further shows that at and prior to the execution of the certain subcontract aforesaid, written permission therefor of the Postmaster-General was secured by the said Weighel, and that thereafter claimant advised the Second Assistant Postmaster-General that the copy of said subcontract was not intended to be filed in the Department for recognition by the Department or as a lien against the pay of the contractor as per written letter in that behalf, a true copy of which is as follows:

56

90 West Congress St.,  
Chicago, Ill., October 4, 1895.

Hon. C. Neilson,  
Second Assistant Postmaster-General,  
Washington, D. C.

SIR: This is to certify that the contract existing between myself and William Weighel of San Francisco, California, for Route No. 235,001, being regulation wagon, mail messenger, transfer and mail station service, city of Chicago, State of Illinois, is not intended to be filed for recognition by the Department, or as a lien against the pay of the contractor.

Very respectfully,  
(Signed)

EZRA J. TRAVIS,  
*Subcontractor.*

Claimant further shows that thereafter the Department acquiesced in the omission on the part of claimant to file copy of said subcontract in the Post Office Department, and in the correspondence that passed between them in respect of the conduct and operation of the said route under said contract and subcontract recognized claimant as being the lawful subcontractor thereunder; as will more fully appear in and by the certain letters referred to in the amended petition on file herein and hereinbefore referred to and also in the certain further letters, one dated September 1, 1896, addressed to the Second Assistant Postmaster-General and signed by claimant as subcontractor, and another dated August 23, 1899, from the Second Assistant Postmaster-General addressed to claimant as subcontractor, coming under the certain route aforesaid; true and correct copies of each of which said letters are as follows:

San Francisco, Cal., September 1, 1896.

Sir: Following your instructions such extra service as is not covered by the regular contract but is required by the Postmaster at  
57 Chicago has been performed, but under protest; and attached letters are copies of the ones sent in to Mr. Montgomery, Supt. of Mail Service at Chicago, and to which your attention is called.

As no response has been received, nor pay for this service, we again hereby respectfully reenter our protest against being required to perform this service without additional pay, for the reasons before given in the letter cited and we earnestly request that we be duly and promptly paid for such service as has already been given up to this time; and that provisions be made for payments for future service of this character.

Very respectfully,

W. WEIGHEL,  
*Contractor.*

E. J. TRAVIS,  
*Subcontractor.*

Hon. Second Asst. P. M. Genl.,  
Washington, D. C.

Post Office Department,  
Office of Second Assistant Postmaster-General,  
Division of Inspection.

Washington, Aug. 23, 1899.

SIR: A fine of \$55.50 has been imposed on the Contractor on Route No. 235,001, in the State of Illinois, for the quarter ended June 30, 1899, 189, because of failures and irregularities as stated below—

Delays in delivering mail to Post Office:

From Chi. M. & St. P., tr. No. 30, 35 min., April 2.....	\$0.50
From Chi. R. I., & P., tr. No. 108, 38 min., April 19.....	.50
From Chi. & E. Ills., tr. No. 6, 30 min. April 22.....	.50
From B. & O., tr. No. 7, 27 min., April 24.....	.50
Carried forward.....	\$2.00
58 Brought forward.....	\$2.00
From Chi. & E. Ills., tr. No. 6, 31 min., May 17.....	.50
From Chi. & Gt. W., tr. No. 2, 45 min., May 22.....	.50
From Board of Trade Sta., due 11.30 a. m., 13 min., June 7.....	.50
From Board of Trade Sta., due 7.45 a. m., 21 min., June 8.....	.50
From Sta. "U," tr. Nos. 22, 27, 28 and 30, 14 to 25 min., June 10.....	2.50
From Chi. & E. Ills., tr. No. 10, 20 min., June 12.....	.50

From Mich. Cent., tr. No. 21, 50 min., June 13.....	.50
From Wabash, tr. No. 9, 30 min., June 16.....	.50
From Wis. Cent., tr. No. 8, 30 min., June 27.....	.50

## Failure to make direct transfers:

From C. & N. W., tr. No. 504, to Mich. Cent., tr. No. 36, April 16.....	1.00
From P. F. W. & C., tr. No. 7 (2 loads), to C. & N. W., trs. Nos. 9 and 509, May 4, 11.....	4.00

## Failures to make direct transfers:

From C. R. I. & P., tr. No. 6, to Chi. & Gd. Tk., tr. No. 10, May 8.....	1.00
From L. S. & M. S., tr. No. 7, to P. C. C. & St. L., tr. No. 10, May 15.....	1.00
From P. F. W. & C., tr. No. 15 (34 sacks), to C. R. & P., tr. No. 21, May 25.....	1.00
From C. & N. W., trs. Nos. 2 and 50 to Chi. & Streator, tr. No. 13, May 26.....	1.00
From B. & O., tr. No. 7, to Chi. & Lou., tr. No. 3, and Chi. Rich. & Cin., tr. No. 32, May 28.....	1.00
From C. I. & L., tr. 6, to P. F. W. & Chi., tr. No. 6, May 28	1.00
From C. C. C. & St. L., tr. No. 37, to Cottage Grove Ave. R. P. O. trip 2, May 20.....	1.00
From B. & O., tr. No. 47, to C. & N. W., tr. No. 50, and C. C. C. & St. L., tr. No. 12, June 12.....	1.00
Carried forward.....	\$21.50

Brought forward.....	\$21.50
From B. & O., tr. No. 5 to Chi. Bur. & Q., tr. No. 11, June 9.....	1.00
From C. M. & St. P., tr. No. 4, to B. & O., tr. No. 8, June 11	1.00
From C. & N. W., tr. No. 8, to A. T. & S. F., tr. No. 9, June 17.....	1.00
From P. C. C. & St. L., tr. No. 19, to C. R. I. & P., tr. No. 11, June 18.....	1.00
From C. R. I. & P., tr. No. 2, to Mich. Cent., tr. No. 14, June 25.....	1.00
From C. & N. W., trs. Nos. 90, 152 and 12, to L. S. & M. S., tr. No. 14, June 29.....	1.00

## Failures to disp. mail from G. P. O. &amp; Stations:

From G. P. O. by C. R. I. & P., tr. No. 119 (Mail for Auburn Park), May 4.....	1.00
From Station "S" by B. & O., tr. No. 14, May 24.....	1.00
From G. P. O. by Chi. & Erie, tr. No. 2, June 12, 1899....	1.00
Because of depredation committed by Walter Porter and John Newman, drivers, some time previous to June 20, 1899.....	25.00

Total Fine..... \$55.50

This amount will be deducted from your pay as subcontractor on said Route, in accordance with the terms of your subcontract. The right is reserved to make disallowances from future payments for other failures or delinquencies, if any have heretofore occurred, and to correct errors and omissions.

Very respectfully,

W. S. SHALLENBERGER,  
*Second Assistant Postmaster-General.*

Mr. E. J. Travis, •  
Subcontractor, Chicago, Ills.:

That the payments for the service for so transporting the mails on said Route 235,001 for the said term were duly made by the  
60 United States to said William Weighel. That said Weighel paid to said Travis for said services the said annual sum of \$70,000 as provided in said subcontract, and therefor, paid him nothing more, and declined to bear any of the responsibility or expenses of any of the said services set forth in the said petition; said Weighel further declined to have suit brought in his name for the alleged extra services as set forth, except upon the express condition that "any such suit or suits to be instituted at the sole cost, charge and expense of the said Travis—and not otherwise." This authority, with the condition here stated, is in writing, duly acknowledged before a notary public, and a copy, as Exhibit 2, is attached hereto as a part of this substitute for the amended petition. The limitation of such authority is sought to be added to by the attorney of said Weighel, E. B. Young, in his letter to said Travis of November 14, 1899, transmitting the said written authorization of said Weighel, as follows: "This authority is sent you upon the conditions that you agree to hold and save harmless, Mr. Weighel from all claims or demands of every kind or description that may be made by being made the plaintiff in the suit against the Government, and upon the further condition, as stated in the authority, that any such suit or suits must be at your sole cost, charge and expense." A copy of this letter is hereto attached as a part of this substitute for the amended petition (Exhibit 3).

That all the services alleged in the petition, to which this is an amendment, as having been extra and not provided for by the said contract between the United States and said Weighel, and not paid for by the United States, were performed by said Ezra J. Travis, your petitioner herein, and by no other person, and that all the expenditure and cost made necessary by performing said alleged extra services, were duly and wholly borne by said Travis.

61 14. Your petitioner further states to the court, upon information and belief, that said Weighel, after the beginning of the suit numbered 22,532, became burdened with debts and judgments to large amounts were secured against him, and that he became insane, or imbecile, and, after being a long time confined in an asylum in the State of California, died therein on or about the day of — 190—, by reason of which your petitioner has been uncer-

C. F. HUNT, ETC., VS. THE UNITED STATES.

tain as to the course he might properly pursue to protect his rights in the premises as herein set forth.

15. And, further, your petitioner therefor prays judgment in his favor against the United States for the sum of \$52,327.

EZRA J. TRAVIS,

SERVEN & JOYCE,

*Atty. for Petitioner,*

1422 F Street, N. W., Washington, D. C.

A. A. HOEHLING, Jr.,

*Of Counsel.*

DISTRICT OF COLUMBIA,

*City of Washington, ss:*

Before me, the undersigned, a notary public in and for the District and City aforesaid, personally appeared Ezra J. Travis, who being first duly sworn by me, on oath says that he has read the foregoing amendments to the amended petition herein and is acquainted with the contents thereof; that the matters and things therein stated of his own knowledge are true and those stated upon information and belief he believes to be true.

EZRA J. TRAVIS,

Subscribed and sworn to before me this 13th day of February, A. D. 1912.

META A. FAULCONER,

*Notary Public, D. C.*

EXHIBIT 1.

(2122.)

*Subcontract.*

Covered Regulation Wagon Service.

Route No. 235,001. Pay of Subcontractor \$70,000 per annum.

This article of contract, made the 6th day of February, eighteen hundred and ninety-five, between W. Weighel, of San Francisco, County of San Francisco, and State of California, contractor with the United States, party of the first part, and E. J. Travis, of Chicago, County of Cook, and State of Illinois, subcontractor, party of the second part, and Matthew Cullen and Thomas McCoy, of Salt Lake City, Utah, his sureties:

Witnesseth, that whereas the said party of the first part has exe-

cuted a contract with the United States (acting in this behalf by the Postmaster-General), according to law, for transporting the mail on Route No. 235,001, being Covered Regulation Wagon Service at Chicago, State of Illinois, under the advertisement of September 15, 1894, and having obtained conditional permission to sublet the same, has made the following agreement with the said party of the second part, to wit:

The said party of the second part and his sureties aforesaid do jointly and severally undertake, covenant, and agree, and do bind themselves and each of them to and with the said party of the first part in the sum of One Hundred Thousand Dollars, to transport the United States Mail on the said Route No. 235,001, being Covered Regulation Wagon Mail Messenger, Transfer, and Mail Station Service at Chicago, Ill., from the first day of July, 1895, to June 30, 1899, inclusive, at such times and upon such schedules as the Postmaster-General may direct, and in full compliance with the postal laws and regulations, and subject to and in compliance with all the requirements of the said party of the first part under the said contract with the United States, for Seventy Thousand Dollars per annum.

And it is hereby further agreed that liability for all fines and deductions imposed upon the party of the first part by the Postmaster-General, for failures and delinquencies in the performance of service under his contract, shall be assumed and borne by the party of the second part, and, if necessary, the Auditor of the Treasury for the Post Office Department may enforce this agreement by proper deductions from any compensation due the party of the second part for service performed under this subcontract.

And it is hereby further agreed that for any new, additional, or changed service required by the Postmaster-General in accordance with the terms of the advertisement and contract hereinbefore mentioned, the party of the second part shall not be allowed any increase of compensation; and in case of decrease or curtailment of the service by order of the Postmaster-General, no deduction therefor is to be made from the compensation of the party of the second part.

In case of total discontinuance of the service, as full indemnity therefor, a pro rata of the one month's extra pay allowed by the United States to the party of the first part is to be allowed to the party of the second part.

And it is hereby further agreed that in case of failure or refusal by the party of the second part to perform the mail service herein provided for, then the sum hereinbefore stipulated shall become immediately due to the party of the first part as liquidated damages, and not as a penalty, and, in default of payment thereof, may be recovered in an action of debt.

To the faithful performance of each and every covenant and agreement hereinbefore mentioned the parties do bind themselves, and each of them and their heirs and personal representatives, and in testimony thereof do hereunto set their hands and seals, the day and year set opposite their respective names.



Signed this 5th day of March, 1895.

W. WEIGHEL, [SEAL.]  
Contractor with U. S.

By ———, [SEAL.]  
His Attorney in Fact.

A. H. BOOMER,  
Witness.

Signed this — day of —, 189—.

———,  
Witness.

Signed this 6th day of February, 1895.

EZRA J. TRAVIS, [SEAL.]  
Subcontractor.

GEO. G. TRAVIS,  
Witness.

Signed this 1st day of March, 1895.

MATTHEW CULLEN, [SEAL.]  
Surety.

W. E. TRAVIS,  
Witness.

Signed this 1st day of March, 1895.

THOMAS McCOY, [SEAL.]  
Surety.

W. E. TRAVIS,  
Witness.

I, the undersigned, postmaster at Salt Lake City, State of Utah, do hereby certify that I am personally acquainted with the above subcontractor and his sureties, and believe them to be fully responsible and competent to execute the provisions of the foregoing contract, and that the subcontractor intends to comply with all of its terms and conditions.

Dated this 1st day of March, 1895.

A. H. NASH,  
Postmaster.

65 *Certificate of the Oath of Mail Contractors and Carriers.*

Required by Act of Congress of June 8, 1872.

(Take This Oath After Signing the Foregoing Subcontract.)

I, Ezra J. Travis, being "employed in the care, custody, and conveyance of the mail" as subcontractor on Route No. 235,001, being Covered Regulation Wagon Service at Chicago, State of Illinois, do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the

establishment of postoffices and post roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control. And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic: So Help Me God.

EZRA J. TRAVIS,  
*Subcontractor.*

COUNTY OF NEW YORK,  
*State of New York, ss:*

Sworn before the subscriber, a Notary Public for the County and State aforesaid, this 21st day of February, A. D. 1895.

H. J. SCHREIBER, [SEAL.]  
*Notary Public,*  
*No. 28, N. Y. Co.*

Note.—This oath may be administered by a Postmaster or other officer qualified to administer oaths, but not by a Deputy or Assistant Postmaster.

If a firm or partnership becomes a subcontractor, each partner or member of the firm must take the oath prescribed by law; and each person employed in connection with the handling or custody of the mail must take the oath before entering on the service.

Principal Requirements of the Contract between the United States and the Party of the First Part to this Article of Contract, and Instructions to Bidders Contained in the Advertisement under which the Contract for Service on this Route was Awarded, to which this Article of Contract is subject.

(This contract is made on a blank form furnished by the Post Office Department. At the foot of this blank is printed in small type the principal requirements of the contract between the United States and the party of the first part to the original contract. All this appears in the original of the subcontract which has been filed with the original petition herein made by said Ezra J. Travis.)

The filing printed upon the form of subcontract, as so furnished by the Department, has a footnote reading as follows:

"This subcontract should be executed in triplicate, and one copy should be retained by the subcontractor. One copy must, under the permission given to sublet, be filed in the office of the Second Assistant Postmaster-General within thirty days after the date when service is to begin under it."

SERVEN & JOYCE,  
*Attorneys for Claimant.*

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## EXHIBIT 2.

Know all men by these presents: that W. Weighel of the City and County of San Francisco, Contractor on mail messenger, transfer and mail station route number 235,001, City of Chicago, and the performance of which service was sublet by the said W. Weighel to E. J. Travis for the period from July 1st, 1895, to June 30th, 1899, does hereby authorize and empower the said E. J. Travis to bring suit against the United States Government for the recovery of any money or moneys due for any service performed that is not embraced in the contract made between the said Weighel and the said United States Government for the said service during the said period of time, any such suit or suits to be instituted at the sole cost, charge and expense of the said Travis and not otherwise.

As witness my hand and seal this 14th day of November, 1899.

(Signed)

W. WEIGHEL.

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

On this 14th day of November, A. D. One Thousand Eight Hundred and Ninety-nine, before me, O. A. Eggers, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared W. Weighel, known to me to be the person described in, whose name is subscribed to and who executed the annexed instrument and he acknowledged to me that he executed the same.

68.04 In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

O. A. EGGERS,

*Notary Public in and for the City and  
County of San Francisco, State of California.*

## EXHIBIT 3.

Gordon & Young,  
Attorneys and Counsellors-at-Law,  
14 Sansome Street,  
San Francisco, Cal.

Rooms 6, 7, 8, and 9.

Telephone 5098.

November 14, 1899.

E. J. Travis, Esq.,  
525 East 15th Street, New York City.

DEAR SIR: Enclosed please find authority from Mr. Weighel to bring suit for the performance of station service in connection with route number 235,001 that was not a part of the contract. This authority is sent you upon the condition that you agree to hold and save harmless Mr. Weighel from all claims or demands of every kind or description that may be made by being made the plaintiff in the suit against the Government and upon the further condition as stated in the authority that any such suit or suits must be at your sole cost, charge and expense. Be good enough to acknowledge receipt of this letter and your acceptance of the conditions upon which the authority is sent. If any other authority is needed kindly advise me.

Yours very truly,  
(Signed)

E. B. YOUNG.

(Exhibits "A," "B," "C," "D," "E," "F" are identical with the exhibits in the original petition and are omitted here.)

105 IV. *Demurrer to the Petition and Substituted Amended Petition Filed March 13, 1912.*

Now come the defendants by their Attorney General and demur to the petition — substituted amended petition filed in said cause, stating as the grounds thereof that the facts alleged in said petition are not sufficient to constitute a cause of action against the United States.

JOHN Q. THOMPSON,  
*Assistant Attorney General.*

V. *Argument and Submission of Demurrer.*

On February 13, 1912, the demurrer of the defendants to the petition — substituted amended petition was argued and submitted by Mr. George M. Anderson for the defendants, and by Messrs. A. A. Hoehling, Jr., and A. R. Serven for the claimant.

106 VI. *Opinion on Demurrer, by Barney, J.*

Entered May 20, 1912.

Court of Claims of the United States.

No. 22532.

(Decided May 20, 1912.)

WILLIAM WEIGHEL

v.

THE UNITED STATES.

BARNEY, J., delivered the opinion of the court:

The questions for decision in this case arise upon the demurrer of the defendants to both the original and the amended petition filed herein. The reason for considering these demurrers separately will appear hereafter.

The original petition was filed by Weighel and its averments are substantially as follows: He entered into a contract with the Postmaster General for wagon service for carrying the mails in the city of Chicago from July 1, 1895, to June 30, 1899. Immediately before the execution of said contract there were in existence four street railway mail routes known and designated by numbers which are given, and which were then carrying the mails from the city post office, each to a different station in said city. It is further alleged that at the same time there were in existence some eight mail substations in said city, and that previous to November 14, 1895, the mail sent out from the city post office to these mail substations had been carried by the employees of the city post office; and likewise that the mail taken to and from the stations and railroad routes mentioned prior to said time had been carried by the city post-office employees. On the 14th of November, 1895, and at various dates thereafter he was compelled by the Government under his contract to carry the mails above mentioned as having been theretofore carried by the city post-office employees, and that said service was performed under protest.

It is further averred that by the terms of the advertisement for bids for the said contract for carrying mails the petitioner was instructed to make inquiries of the postmaster at Chicago for information relative to the service and its requirements; and that before entering into the contract he had made such inquiries and had been informed by said postmaster that said service so performed under protest would not be required. Also that he had made inquiries of the contractor who had had a like contract for the wagon service in the city of Chicago immediately before him regarding the requirements of said service and learned from him that he had been requested to perform the said service during the period of his contract

and had refused to comply on the ground that it was not within the terms of his contract, and upon such refusal he had not been  
107 required to perform the same, but that the department had performed it with its own employees.

Copies of the contract, advertisement, and instructions to bidders above referred to are attached to and made a part of the Weighel petition, and, of course, must be consulted to determine the issue raised by the demurrer.

Without entering into detailed discussion of the different provisions of the contract, we think the case at bar comes within the principle laid down by the decision of this court in the case of Utah & California Stage Co. v. United States (39 C. Cls., 420), and that the petition states a cause of action.

We desire to call attention to one averment of the petition which though somewhat vague, seems to us to be very material in the decision of this demurrer, and that is the averment as to the construction given by the defendants to a contract for the same service entered into and completed immediately before the contract in the case at bar. It is alleged in the petition that the plaintiff "learned" of these facts from such prior contractor. If we take this statement as an averment that the facts were as thus "learned" (and we think the liberal rule as to the construction of pleadings upon demurrer requires us to do so) it seems to us that it brings this case within the decision of the Supreme Court in the case of Ceballos & Co. v. United States (214 U. S., 47) reversing this court (42 Ct. Cls 318). It was there held that where a contract requires construction, a "previous contract between the parties [relating to the same subject-matter] \* \* \* and the construction which obtained in the execution thereof may serve within proper limitations to throw light upon the construction of the contracts here involved." It is true that in that case the contract thus construed was between the same parties, while in the case at bar one of the parties only is the same; but we see no difference in the principle involved. It is a question as to the construction of the somewhat doubtful terms of a contract with the Government, and the construction given by it to a contract in the same terms for the same service will certainly throw light upon the construction of the contract under consideration.

The Government's attorney calls our attention to the fact that it appears from a report of the Post Office Department that at the time of the execution of the contract with the plaintiff the work under it had been decreased from what it was immediately previous. This fact, however, does not appear from the pleadings and can not be considered upon demurrer.

For the reasons stated, the demurrer to the petition of William Weighel is overruled.

We will next consider the demurrer to the petition of Ezra J. Travis. Before the Weighel suit was ever brought to trial, and on August 6, 1907, the present claimant, Ezra J. Travis, filed a motion in the Weighel case asking leave to file an amended petition in that case, which motion was on the same day allowed "subject to objection by the Attorney General or anyone in interest." Travis, on the same

day, filed the petition under consideration, in which is set out substantially the same facts as contained in the Weighel petition in reference to the mail contract, extra services, etc., above mentioned.

In addition thereto he alleges that on February 6, 1895, he entered into a subcontract with Weighel by the terms of which he agreed, for \$70,000 per annum, to carry out the said mail contract which Weighel had entered into with the Government, and that he fully performed all of the mail service therein required, as well as all of the extra service for which the suit was brought by Weighel. He further alleges that Weighel declined to have suit brought in his own name for such extra services except upon the condition that the same should be brought at the sole expense of the claimant, Travis, and that after beginning this suit and before the filing of the amended petition Weighel had died. He prays judgment in his own name for the compensation for the extra services rendered under said contract, being the sum of \$52,327.

From the foregoing statement it will be seen that in substance the petitioner Travis seeks to be substituted for the petitioner Weighel, to recover upon the same cause of action set out in the original petition. As before stated, the defendants have demurred both to the original petition of Weighel and the amended petition of Travis.

The demurrer now under consideration is what is usually designated a general demurrer in terms, but in addition to contending that the petition does not state facts sufficient to constitute a cause of action in favor of either Weighel or Travis, it is contended by the Government that whatever claim Travis may at one time have had under the averments of the amended petition it is now barred by the statute of limitations. As our view of that question settles it in favor of the Government, it is unnecessary to consider any other feature of the demurrer.

Whatever claim may have ever existed against the Government growing out of extra services performed under the mail contract set out in the petition belonged to either Weighel, the original contractor, or to Travis, the subcontractor; it could not have belonged to them jointly. If it belonged to Weighel it is unnecessary to say that that fact puts Travis out of court; if it belonged to Travis we do not see how, after the lapse of more than six years from the date it accrued, he can evade the statute of limitations by asking leave to be substituted as plaintiff in the case of Weighel, for, as before stated, that is the substance of what is asked for in the amended petition.

We are well aware of the tendency of modern legislation, as well as the practice of the courts, to favor the allowance of amendments to pleadings when necessary to effectuate substantial justice, and certainly there is no court in this country where amendments are more generously allowed than in this; but this can hardly be called an amendment and certainly is not an appeal to the court for leniency in allowing the correction of a mistake in pleading. The effect of the proposed amendment is to bring an entirely new suit in this court in the name and for the benefit of a new party plaintiff. We know of no authority for allowing an amendment for any such pur-

pose, with the ulterior object of avoiding the statute of limitations.

It is a misnomer to call it an amended petition, because, in effect, it is asking the court to allow the petitioner, Travis, to be substituted as party plaintiff for Weighel.

We can see no difference in principle nor in legal aspect in this case than if Weighel had brought a suit in a court of competent jurisdiction upon a promissory note and failed to bring it to trial within the period of the statute of limitations, and, while pending, and after the expiration of the period of the statute of limitations, Travis should come in and ask leave to amend the pleadings so as to make him party plaintiff, alleging that the promissory note was always his property.

The demurrer to the amended petition is sustained, and said petition is hereby dismissed.

Howry, J., was not present at the trial of this case and took no part in its decision.

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#### VII. *History of Further Proceedings.*

On May 10, 1918, on motion made therefor and allowed by the Court, Charles F. Hunt, as Executor of William Weighel, was substituted as Claimant.

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#### VIII. *Amended Petition and Exhibits.*

Filed June 11, 1918.

In the Court of Claims of the United States.

No. 22532.

CHARLES F. HUNT, Executor of the Estate of William Weighel,  
Deceased, Substituted Claimant,

vs.

THE UNITED STATES.

*Amended Petition.*

Filed June 11, 1918.

To the Honorable the Court of Claims:

The above-named claimant, Charles F. Hunt, as executor of the estate of William Weighel, deceased, respectfully represents:

#### I.

That he is a citizen of the United States and the duly qualified and acting executor of the estate of William Weighel, deceased, the



original petitioner herein, that he is a resident of the city of  
 112 San Francisco in the State of California, that he and the  
 original petitioner hereinafter referred to as the petitioner,  
 have at all times borne true allegiance to the Government of the  
 United States, and have not in any way voluntarily aided or abetted  
 or given encouragement to rebellion against the said Government,  
 and that he believes the facts herein stated to be true.

## II.

That on September 15, 1894, the Postmaster-General of the United States published an advertisement inviting proposals for covered regulation wagon mail messenger, transfer, and mail station service, at Cincinnati, Ohio; Cleveland, Ohio; Columbus, Ohio; Toledo, Ohio; Chicago, Illinois, and several other cities, from July 1, 1895, to June 30, 1899, in which advertisement the said service in Chicago was designated as Route No. 235,001. A copy of such portions of said advertisement as relate to the service in said city of Chicago is hereto attached, as a part hereof, and marked "Exhibit A."

## III.

That your petitioner was the lowest bidder for said service on Route 235,001 in said city of Chicago, and entered into a contract for the performance of the same, with the Postmaster-General, from July 1, 1895, to June 30, 1899, said contract being in the form and upon the conditions as prescribed in said advertisement. See Exhibit "A" herewith.

## IV.

Your petitioner further shows that at the time when said advertisement inviting bids for contracts for carrying the mails by regulation wagons on Route 235,001 in the said city of Chicago was issued, and at the time when the said contract with your petitioner was so made, and at the beginning of said contract terms, to wit, on the  
 113 first day of July, 1895, and during the continuance of said contract term, there were in existence in said City of Chicago, by direction and order of the Postmaster-General, four certain street railway mail routes, known and designated respectively as route number 335,003, from the city post-office to Station "E," on which route the mails were carried by the West Chicago Street Railroad Company; route number 335,004, from the city post-office to Station "G," on which route the mails were carried by the West Chicago Street Railroad Company; route numbered 335,005, from the city post-office to Station "B," on which route the mails were carried by the North Chicago Street Railroad Company, and route numbered 335,006 (previously being numbered 135,136), from the city post-office to Station "N," on which route the mails were carried by the Chicago City Railway Company.

## V.

Petitioner further shows that along and on said Route 335,003 there were sub-mail stations known and designated as Stations "C," "D," and "E," on Route 335,004, Stations "A" and "B," and on Route 335,006 (previously 135,136), Stations, "L," "M," and "N." That the mail sent out from the city post-office to be delivered at and into these various stations was carried previous to November 14, 1895, from said city post-office to the said city railways at the nearest practicable point on such railways, by the regular employees of the Post-Office Department, and were likewise delivered from the cars of said railways into said stations by such employees; and in like manner the mail to be delivered from one station to another and from the various stations to the city post-office, and other points, was carried from the respective stations to the cars, and from the cars to the city post-office, and from the cars to the station or stations and other points where the same was to be delivered, by the employees of the Post-Office Department.

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## VI.

By the terms of the advertisement aforesaid inviting bids for carrying the mail on Route No. 235,001, bidders were directed to inquire of the postmaster, at the city where the service was to be performed, for information relative to the service and its requirements. In pursuance of this instruction, your petitioner, before making the bid as aforesaid, did make inquiry of the then postmaster of said city of Chicago, and, among other inquiries, asked him if any of the service which was then being performed by the employees of the Post-Office Department in carrying the mail to and from the street railway cars aforesaid and the city post-office and the substations, all as above set forth, would thereafter and during the contract term from July 1, 1895, to June 30, 1899, be required of the party or person who should, during such term, be the contractor on said Route 235,001, and was assured by the said postmaster that no such service would be required of the said contractor.

And your petitioner further declares that before making his said bid he learned from the contractor on said Route 235,001 for the contract term from July 1, 1891, to June 30, 1895, that he had been requested by the officers of the Post-Office Department to take up and perform the said service of carrying the mail between the city post-office and the said street cars, and said cars and the said substations along the several street car routes as above described, but that he had refused to do so on the ground that it was not within the terms of his contract by which he engaged to perform the covered regulation wagon service on said Route 235,001, and upon such refusal he, the said contractor, had not been required to perform the said service and that the Department continued to perform it with its own employees. And pursuant to the assurance made your petitioner by the postmaster of the city of Chicago as herein stated, and the in-

formation gathered from the former contractor, as aforesaid, and the information set out in the said advertisement of September 15, 1894, your petitioner made the said bid to perform the service on said Route 235,001. .

## VII.

That on or about the 14th day of November, 1895, the Postmaster-General made an order directing your petitioner to perform service as follows (or more frequently, if necessary), without additional pay, alleging the same to be in accordance with the terms of petitioner's contract, to wit: To make twelve trips each week day and three trips each Sunday from the general post-office in said city of Chicago to West Chicago Street Railway at Clark and Madison streets, and the same number of trips from said last-named point back to said general post-office; also twelve trips on each week day and three trips on Sundays from said general post-office to North Chicago Street Railway at Clark and Monroe streets, and the same number of trips from said last-named point back to said general post-office; also twelve trips on each week day and three trips on Sundays from said general post-office to West Chicago Street Railway at La Salle and Madison streets, and the same number of trips from last-named point back to said general post-office; also ten trips each week day and three trips on Sundays from Station "C" to the West Chicago Street Railway at Central avenue and Madison street, and the same number of trips from the last-named point back to Station "C;" also ten trips each week day and three trips each Sunday from Station "D" to West Chicago Street Railway at Western avenue and Madison street, and the same number of trips from the last-named point back to Station "D;" also ten trips on week days and three trips on Sundays from Station "E" to West Chicago Street Railway at Fortieth and Madison streets, and the same number of trips from the last-named point back to Station "E;" also ten trips each week day and three trips on Sundays from Station "F" to West Chicago Street Railway at Carpenter and Milwaukee avenues, and the same number of trips from the last-named point back to Station "F;" also  
 116 ten trips each week day and three trips on Sundays from Station "G" to West Chicago Street Railway at Milwaukee and Western avenues, and the same number of trips from the last-named point back to Station "G;" also ten trips on each week day and three trips on Sundays from Station "A" to North Chicago Street Railway, North Clark and Oak streets, and the same number of trips from the last-named point back to Station "A;" also ten trips on each week day and three trips on Sundays from Station "B" to North Chicago Street Railway at Diversey street and Sheffield avenue, and the same number of trips from the last-named point back to Station "B;" all of which is duly set out in the copy of said order hereto attached and marked Exhibit "B" and made a part hereof.

## VIII.

Your petitioner further states to the Court that on or about the 12th day of May, 1896, he received an order in general terms from J. A. Montgomery, the Superintendent of United States Mails at the city of Chicago, directing that on the 18th day of May, 1896, he, your petitioner, should take up the service of carrying the mails to and from the said city post-office and the cars on Cottage Grove avenue, and to and from Stations "L," "M," and "N," and said cars, the mails being at that time carried on said avenue by the Chicago City Street Railway, and the route being known and designated as route number 135,136 (subsequently numbered 335,006), which said order is hereto attached as Exhibit "C" and made a part hereof.

And that on or about the 27th day of May, 1896, he received through the said Superintendent of Mails a further order from the Postmaster-General signed by G. F. Stone, Acting Second Assistant Postmaster-General, directing your petitioner to make nine trips each week day and four trips on Sundays from Station "L" to the Chicago City Railway, and the same number of trips from the latter-named point back to Station "L;" also to make nine trips each week day

and four trips on Sundays from Station "M" to the Chicago City Railway, and the same number of trips from the last-named point back to Station "M;" also to make nine trips each week day and four trips Sundays from Station "N" to the Chicago City Railway, and the same number of trips from the last-named point back to Station "N;" all of which is duly set out in the copy of said order hereto attached and marked Exhibit "D" and made a part hereof.

## IX.

Your petitioner further shows that on or about the 27th day of February, 1897, the Postmaster-General made an order, by the Acting Second Assistant Postmaster-General, directing your petitioner to carry the mail eleven trips on each week day and five trips on Sundays from Station "U" to the West Chicago Street Railway, and the same number of trips from the said last-named point back to Station "U;" also to make eleven trips each week day and five trips on Sundays from the West Chicago Street Railway, at the junction of Madison and State streets, to the Chicago City Railway, at the junction of Madison and Wabash avenues, and the same number of trips from the last-named point back to the West Chicago Street Railway, at the junction of Madison and State streets; all of which is duly set out in the copy of said order hereto attached and marked Exhibit "E" and made a part hereof.

## X.

That when the aforesaid orders were made, to wit, on the 14th day of November, 1895, the 12th day of May, 1896, the 27th day

of May, 1896, and the 27th day of February, 1897, to carry the mails between the city postoffice and points on the several street railways, and between the mail stations "A," "B," "C," "D," "E," "F," "G," "L," "M," "N," and "U," and the said railways, the said mails were being carried over said railways under contracts by the several railway companies with the Postmaster-General, as follows: The mails supplying stations "C," "D," and "E," on and over the West Chicago Street Railway, and over route number 335,003; the mails supplying stations "F," "G," and "U," on and over a line of the same railway, the route being numbered 335,004; the mails supplying stations "A," and "B," on and over the North Chicago Street Railway, the route being numbered 335,005; and the mails supplying stations "L," "M," and "N," on and over the Chicago Street Railway, the route being numbered 335,006.

## XI.

That upon receiving the said several orders stated in the last paragraph, your petitioner protested against the performance of said service as not being within the terms and conditions of his aforesaid contract to perform the Covered Regulation-Wagon Mail-Messenger, Transfer, and Mail Station Service on route No. 235,001 for the said term from July 1, 1895, to June 30, 1899, and advised the United States, through its proper department, that for the performance of such service he would claim and demand reasonable compensation.

## XII.

That in pursuance of said several orders, and under the terms of the said several protests, your petitioner performed all of said additional service and made all the additional trips hereinbefore set forth, although such services were not within the terms of his contract aforesaid, and they were fairly and reasonably worth, over and above all just credits and offsets, the sums hereinafter set forth in your petitioner's Bill of Particulars, hereto attached as Exhibit "F" and made a part hereof; and your petitioner avers that said claim has not been assigned or transferred by him, and that all of said service was received and accepted by the United States, and by reason thereof there arises on the part of the United States an implied promise to pay your petitioner the reasonable worth of the same.

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## XIII.

And your petitioner therefore prays judgment against the United States for the sum of \$52,327.60.

CHARLES F. HUNT,

*Executor.*

By A. R. SERVEN,

*Attorney for Petitioner.*

SERVEN &amp; JOYCE,

1422 F St. N. W., Washington, D. C.,

*Attorneys for Petitioner.*

DISTRICT OF COLUMBIA,  
*City of Washington, ss:*

Before me, the undersigned, a notary public, in and for the said District and city, personally appeared A. R. Serven, the attorney for the claimant therein, who, being duly authorized to verify the petition, and who being duly sworn, deposes and says that he has read the foregoing petition by him subscribed, and is acquainted with the contents thereof; that the matters and things therein contained and stated are true, as he verily believes; that the claimant is justly entitled, as shown in said petition, to the moneys therein claimed to be due and owing to him from the United States, after allowing all just credits and set-offs, and that to the best of deponent's knowledge and belief no assignment or transfer of the claim therein set forth, or any part thereof, or any interest therein, has been made by the claimant to any one whomsoever or by any one in his behalf.

A. R. SERVEN.

Subscribed and sworn to before me this 20th day of May, A. D. 1918.

W. B. JAYNES, *Notary Public.*

(Here follows table marked page 126.)

120-129

EXHIBIT A.

*Proposals for Covered Regulation Wagon Mail Messenger, Transfer, and Mail Station Service.*

Post Office Department,  
 Washington, D. C., September 15, 1894.

Proposals will be received at the contract office of this Department until 4 P. M. of December 4, 1894, for carrying the mails of the United States in the covered regulation wagons prescribed by the Department, on the routes herein specified, being covered regulation wagon mail messenger, transfer, and mail station service in the cities hereinafter named, between the post-offices and railroad stations, between the post-offices and steamboat landings, between the post-offices and mail stations, and between the several railroad stations, steamboat landings and mail stations, as prescribed herein, for the term from July 1, 1895, to June 30, 1899, viz:

Cincinnati, Ohio,  
 Cleveland, Ohio,  
 Columbus, Ohio,  
 Toledo, Ohio,  
 Chicago, Ill.,

Detroit, Mich.,  
 Milwaukee, Wis.,  
 Minneapolis, Minn.,  
 St. Paul, Minn.,  
 Kansas City, Mo.,

St. Louis, Mo.

Decisions announced on or before December 21, 1894.

Contracts to be returned to the Departments, duly executed, within thirty days from date of acceptance of proposals.

Route No. 235,001—Continued.

Mail Station Service—Continued.

From—	To—	Distance.	Number of trips daily, except Sunday.	Number of trips on Sunday.	Total number of trips a week.	Running time allowed from July 1, 1896.
		<i>Miles.</i>				<i>Min.</i>
General post-office, by Stations L and M.	Station N. ....	6.71	4	2	26	72
Station N, by Stations M and L.	General post-office ...	6.71	4	2	26	72
Station O .....	Lake Shore & Michigan Southern R.R.	0.50	6	2	39	12
Lake Shore & Michigan Southern R.R.	Station O .....	0.50	10	5	65	12
Station O .....	Chicago, Rock Island & Pacific R.R. ....	0.50	5	2	32	12
Chicago, Rock Island & Pacific R.R.	Station O .....	0.50	5	2	32	12
Station O .....	Pittsburg, Ft. Wayne & Chicago R.R. ....	0.34	12	4	76	10
Pittsburg, Ft. Wayne and Chicago R.R.	Station O. ....	0.34	7	3	45	10
Station S. ....	Lake Shore & Michigan Southern R.R. ....	0.57	5	2	32	15
Lake Shore & Michigan Southern R.R.	Station S. ....	0.57	8	4	52	15
Station S. ....	Pittsburg, Ft. Wayne & Chicago R.R. ....	0.50	8	1	49	12
Pittsburg, Ft. Wayne & Chicago R.R.	Station S. ....	0.50	6	2	38	12
Station S. ....	Baltimore and Ohio R.R. ....	0.53	3	2	20	15
Baltimore & Ohio R.R.	Station S. ....	0.53	3	2	20	15
Forest Hill Substation	Pittsburg, Cincinnati, Chicago & St. Louis R.R. ....	0.22	5	1	31	10
Pittsburg, Cincinnati, Chicago & St. Louis R.R.	Forest Hill Substation .....	0.22	5	1	31	10
General post-office ...	Substation 2 .....	5.03	1	.....	6	105
Substation 2, by Substations 5, 1, and 3.	General post-office ...	5.33	2	.....	12	75
General post-office by Substation 2.	Substation 5 .....	6.57	1	.....	6	120





(Schedules for mail messenger service, transfer service, and for mail station service, excepting the page included, and, probable and additional service are omitted here.)

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*Instruction to Bidders.*

1. The foregoing schedules show the service, August 15, 1894, as near as can be stated. Bidders must inform themselves of the amount and character of the service that will be required during the next contract term.

The statements of probable additional service that may be necessary on the routes under this advertisement are given so that bidders may be as fully advised as possible of the amount service likely to be required. It will not, however, limit the liability of the contractors to perform all service that may become necessary, without  
131 additional pay.

2. The contractors under this advertisement will be required to perform, without additional compensation, any and all new or additional service that may be ordered from July 1, 1895, or at any time thereafter during the contract term, whether between post-offices and railroad stations, between post-offices and steamboat landings, between post-offices and mail stations, or between the several railroad stations, steamboat landings, and mail stations, now established or that may hereafter be established, whether caused by the establishment of new or by change of site of existing post-offices, railroad stations, steamboat landings, or mail stations within said cities, or caused by the alteration of the routes made necessary for any other reason. Bids must be made with this distinct understanding and must name the amount per annum for the whole service and not by the trip.

3. There will be no diminution of compensation for partial discontinuance of service, or increase of compensation for new, additional, or changed service that may be ordered during the contract term; but the Postmaster-General may discontinue the entire service on any route whenever the public interest, in his judgment, shall require such discontinuance, he allowing a full indemnity to the contractor, one month's extra pay.

4. The Postmaster-General may annul a contract for repeated failures; for violating the Postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a driver or any person having charge of the mail when required by the Department; for transmitting commercial intelligence of matters which should go by mail contrary to the stipulations herein, or for transporting persons so engaged; whenever the contractor shall become a postmaster, assistant postmaster, clerk in a post-office, or member of Congress, and whenever, in the opinion of the Postmaster-General, the service cannot be safely continued or the laws  
132 maintained on the route.

Fines will be imposed for neglect of duty.

5. The Postmaster-General may, in his discretion, continue in force, beyond its express terms for a period not exceeding six months, any contract made under this advertisement until a new contract with the same or other contractors shall be made.

6. The distances given are believed to be substantially correct, but no additional pay will be allowed should they be greater than herein stated. Bidders must inform themselves as to the distances, the running time, the weight of the mails, the condition of hills, streets, toll bridges, ferries, and obstructions of all kinds whereby expense may be incurred, and as to the probable increase, additional service, or changes likely to be rendered necessary. Claims for additional pay based upon such grounds, or for alleged mistakes or misapprehensions as to the service required, or for bridges destroyed, or ferries discontinued, can not be considered.

7. Foreign mails in transit across the territory of the United States shall, within the meaning of this advertisement, be deemed and taken to be mails of the United States.

8. The transfer service shall include the conveyance of all post-office supplies arriving for the city post-office or for transit through the city.

9. Contractors will be required to convey on the driver's seat of each wagon, whenever necessary, one railway post-office clerk, a substitute, or a messenger.

10. Drivers must be over sixteen years of age, of good moral character, and able to read and write the English language.

133 They must take the oath required by law, and must wear the prescribed cap or hat.

11. All service must be performed in regulation wagons constructed in accordance with the plans and specifications adopted by the Department September 1, 1894. There are four sizes of regulation wagons, viz., the large two-horse wagon, the medium two-horse wagon, the large one-horse wagon, and the small one-horse (or pony) wagon. All of these wagons are to be built with closed bodies. In a few exceptional cases where, in the judgment of the Department, regulation wagons are not necessary, permission may be given to perform a limited portion of the service either in one-horse two-wheel carts or in push carts, built according to plans and specifications furnished by the Department; but these carts must not be used in the performance of service unless specially authorized by the Second Assistant Postmaster-General. Full particulars as to style and construction of wagons required may be obtained on application to the Second Assistant Postmaster-General, Washington, D. C. The wagons must be kept painted and varnished in a thorough manner and ornamented according to specifications. They must be frequently washed and kept clean and in good condition. Only first-class wagons of the prescribed pattern will be accepted. No lettering will be permitted on any part of the wagons other than such as is

required by the specifications. The horses used must be suitable for the work, presenting a creditable appearance, and be in first-class condition at all times.

12. When mails are delayed in arrival, wagons must be kept at the depots or landings until the arrival of such mails, and the same be conveyed to the post-office without detention. Except in cases of accident, wagons containing mail must not be opened, or the mails therein contained while in transit. The mails must be  
134 carried inside of the wagons and not on the outside or on the seat with the driver, and in no case shall any person be allowed to ride inside of the wagon containing mail.

13. The equipment of the contractor shall be subject to frequent inspections, and the refusal or failure of any contractor to keep his wagons, horses, and harness in good order and appearance, or to furnish proper drivers, so as to perform the service in a style creditable to the Department, shall be sufficient cause for the annulment of his contract and the reletting of the service at his expense.

14. Specifications for cap and hat: Cap—To be of all-wool blue flannel of good quality, three and one-fourth inches high; solid leather fronts one and three-fourths inches deep, with one small regulation P. O. D. button on each side, a silver wreath in front inclosing the words "U. S. Mail," and to have one oiled linen cover. Hat—  
from June 16 to September 15 of each fiscal year, in lieu of the cap, a straw hat with rim not to exceed three and one-half inches in width and a crown not to exceed four inches in height may be worn. A silver wreath inclosing the words "U. S. Mail" shall be placed on the front of the hat. In severe winter weather the drivers for the contractor will be permitted to wear warm woolen caps of a uniform appearance with regulation badge on front.

15. The wagons, horses, harness, and drivers are to be at all times subject to the approval and control of the postmaster, and the mails are to be taken from and delivered into the post-offices, mail stations, steamboats, and cars at such points and at such hours, under his direction, approved by the Postmaster-General, as will secure proper dispatches and connections, and at the contractor's expense for tolls and ferriage.

16. The number of wagons required must be sufficient, in the opinion of the postmaster, for the prompt and proper performance of the service. The postmaster will also determine  
135 which of the sizes of the several regulation wagons mentioned herein will be necessary.

17. The contractor will be required to provide and keep on hand a sufficient number of extra wagons to take the place of those which may be temporarily disabled, delayed, waiting for trains, or withdrawn from service for repairs, or required by the increase of service, so that the service shall always be promptly performed in regulation wagons.

18. Every proposal must be accompanied by a bond, with two or more sureties, approved by the postmaster, and in cases where the amount of the bond exceeds five thousand dollars (\$5,000) the approval must be by a postmaster of the first, second, or third class.

19. Sureties on the bond of a bidder must take an oath before an officer qualified to administer oaths that they are the owners of real estate worth, in the aggregate, a sum double the amount of said bond, over and above all debts due and owing by them, and all judgments, mortgages, and executions against them, after allowing all exemptions of every character whatever. A married woman will not be accepted as a surety, either on the bond of a bidder or upon a contract. Accompanying the bond of a bidder, and as a part thereof, shall be a statement of the sureties under oath, showing the amount of real estate owned by them, brief descriptions thereof, and its probable value, where it is situated, and in what county and State the record evidence of their title exists. Any surety who swears falsely to this statement is deemed by the law guilty of perjury, and is punishable as is prescribed by law for that crime.

20. There should be but one route bid for in a proposal. Consolidated or combination bids ("proposing one sum for two or more routes") cannot be considered.

21. Bidders are cautioned to forward their proposals in  
136 time to reach the Department, or to file them, by the day and hour named in this advertisement, as bids received after that time will not be considered. If sent by mail or express, ample time should be allowed for their transit, as they cannot be deemed to be received at the Department until actually delivered at the contract office; neither can bids be considered which are without bond, oath, or certificate required by section 245, act of June 23, 1874, and section 246, act of August 11, 1876. No withdrawal of a bid will be allowed unless the withdrawal is received twenty-four hours previous to 4 P. M., December 4, 1894.

22. No contract for carrying the mail shall be made with any person who has entered, or proposed to enter, into any combination to prevent the making of any bid for carrying the mail, or who has made any agreement, or given or performed, or promised to give or perform, any consideration whatever to induce any other person not to bid for any such contract.

23. In case of failure of the accepted bidder to execute a contract within the prescribed time, or of the abandonment of service during the contract term, the service will be relet at the expense of the failing bidder or contractor, and any accepted bidder who shall wrongfully refuse or fail to enter into contract in due form, and to perform the service prescribed in his proposal, may be deemed guilty of a misdemeanor, and on conviction thereof be fined and imprisoned therefor.

24. The Postmaster-General reserves the right to suspend the award of contract on any route for a period of not exceeding thirty days after the date fixed in this advertisement, with a corresponding allowance of time for the execution of contract, and to reject all bids on any route whenever in his judgment the interests of the service require it; and also to disregard bids of failing contractors 137-145. and bidders, and also to disregard bids accompanied by bonds on which there appears as surety the name of a person who has been declared a failing contractor or bidder, or been barred from bidding for any reason whatever.

25. Postmasters are cautioned, under penalty of removal, not to approve the bond of any bidder before the proposal is completed and the bond is signed by the bidder and his sureties, and not until entirely satisfied of the sufficiency of the sureties. They are also cautioned not to divulge to any one the amount of any proposal certified to them. Doing so will be sufficient cause for their removal.

26. No postmaster, assistant postmaster, or clerk employed in any post-office shall be a contractor, or concerned in a contract for carrying the mail.

27. Bidders are requested to use the blanks for proposals furnished by the Department, which may be obtained at the post-office on each route herein advertised. For information relative to the service and its requirements, bidders are requested to apply to the postmaster at the city where the service is to be performed.

28. Proposals should be inclosed in envelopes, sealed, and superscribed "Proposals for covered regulation-wagon mail-messenger, transfer, and mail-station service, City of —," and addressed to the Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.

The accepted bidder will be required to execute a contract in the following form:

Form of contract omitted, being the same as the executed contract, copy of which was filed with the amendment to the amended petition.

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## EXHIBIT B.

Washington, D. C., November 14, 1895.

SIR: You are informed that the following order has this day been made in regulation wagon route No. 235,001, Chicago, Illinois:

"Require contractor to perform service as follows (or more frequently, if necessary) without additional pay, in accordance with the terms of his contract."

## Additional Mail Station Service.

From—	To—	Distance. Miles.	No. of trips daily, except Sunday.	No. of trips on Sunday.	Total number of trips a week.	Running time. Min.
General post-office.....	W. Chicago St. Rwy., Clark and Madison streets .....	.26	12	3	75	7
West Chicago St. Rwy., Clark and Madison street.	General post-office....	.26	12	3	75	7
General post-office.....	N. Chicago St. Rwy., Clark and Monroe streets .....	.18	12	3	75	6
N. Chicago St. Rwy., Clark and Monroe streets.	General post-office....	.18	12	3	75	6
General post-office.....	W. Chicago St. Rwy., La Salle and Madi- son streets.....	.34	12	3	75	8
W. Chicago St. Rwy., La Salle and Madison streets.	General post-office....	.34	12	3	75	8
Station C.....	W. Chicago St. Rwy., Central avenue and Madison street.....	.11	10	3	63	5
W. Chicago St. Rwy., Cen- tral avenue and Madison street.	Station C.....	.11	10	3	63	5
Station D.....	W. Chicago St. Rwy., Western avenue and Madison street.....	.15	10	3	63	6
W. Chicago St. Rwy., West- ern avenue and Madison street.	Station D.....	.15	10	3	63	6
Station E.....	W. Chicago St. Rwy., 40th and Madison streets .....	.09	10	3	63	5
W. Chicago St. Rwy., 40th and Madison streets.	Station E.....	.09	10	3	63	5
Station F.....	W. Chicago St. Rwy., Carpenter and Mil- waukee avenue.....	.04	10	3	63	5
W. Chicago St. Rwy., Car- penter and Milwaukee ave- nue.	Station F.....	.04	10	3	63	5
Station G.....	W. Chicago St. Rwy., Milwaukee and Western avenue....	.14	10	3	63	6
W. Chicago St. Rwy., Mil- waukee and Western ave- nue.	Station G.....	.14	10	3	63	6
Station A.....	N. Chicago St. Rwy., N. Clark and Oak streets .....	.11	10	3	63	6
N. Chicago St. Rwy., N. Clark and Oak streets.	Station A.....	.11	10	3	63	6

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*Additional Mail Station Service—Continued.*

From—	To—	Distance.	No. of trips daily, except Sunday.	No. of trips on Sunday.	Total number of trips a week.	Running time.
		<i>Miles.</i>				<i>Min.</i>
Station B.....	N. Chicago St. Rwy., Diversey street and Sheffield avenue....	.23	10	3	63	10
N. Chicago St. Rwy., Diver- sey street and Sheffield ave- nue.	Station B.....	.23	10	3	63	10

Permit the contractor to use regulation carts in the performance of this service whenever in the judgment of the postmaster at Chicago, Illinois, such carts can be used advantageously in the service.

Very respectfully,

G. F. STONE,

*Acting Second Assistant P. M. General.*

Mr. W. Weighel,

Care S. C. Ramage,

No. 409 B street N. E., Washington, D. C.

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## EXHIBIT C.

May 12, 1896.

Mr. E. J. Travis,

U. S. Mail Messenger,

Chicago, Ill.

SIR: I beg to advise you that beginning Monday, the 18th, service between this office and Stations L, M, and N will be performed by Chicago and Cottage Grove ave. R. P. O. as per schedule herewith.

Kindly make the necessary arrangement to have this service begin at the central office and by transfers from Stations L, M, and N, beginning Monday morning.

Respectfully,

J. A. MONTGOMERY,

*Supt. of Mails.*

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## EXHIBIT D.

Washington, D. C., May 27, 1896.

SIR: You are informed that the following order has this day been made on regulation wagon route No. 235,001, Chicago, Illinois:

"Require contractor to perform service as follows (or more frequently, if necessary) without additional pay, in accordance with the terms of his contract."

*Additional Mail Station Service.*

From—	To—	Distance.	No. of trips daily, except Sunday.				No. of trips on Sunday.				Total number of trips a week, including time.			
		Miles.												
Station L.....	Chicago City Rwy.... (135136)	0.08	9	4	38	5								
Chicago City Rwy..... (135136)	Station L.....	0.08	9	4	38	5								
Station M.....	Chicago City Rwy.... (135136)	0.03	9	4	38	5								
Chicago City Rwy..... (135136)	Station M.....	0.03	9	4	38	5								
Station N.....	Chicago City Rwy.... (135136)	0.02	9	4	38	5								
Chicago City Rwy..... (135136)	Station N.....	0.02	9	4	38	5								

Very respectfully,

G. F. STONE,  
*Acting Second Assistant P. M. General.*

Mr. Weighel,  
Care of E. J. Travis,  
No. 90 W. Congress St.,  
Chicago, Illinois.

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## EXHIBIT E.

Washington, D. C., February 27, 1897.

SIR: You are informed that the following order has this day been made:



"From March 3, 1897, require the contractor to perform services as follows (or more frequently, if necessary) without additional pay, in accordance with the terms of the contract."

*Additional Mail Station Service.*

From—	To—	Distance.	No. of trips daily, except Sunday.	No. of trips on Sunday.	Total number of trips a week.	Running time allowed.
		<i>Miles.</i>				<i>Min.</i>
General post-office.....	Station U.....	1.16	10	5	65	30
Station U.....	General post-office....	1.16	10	5	65	30
Station U.....	West Chicago St. Ry., Madison and Jefferson streets.....	.38	11	5	71	15
West Chicago St. Ry., Madison and Jefferson streets.	Station U.....	.38	11	5	71	15

*Additional Transfer Service.*

From—	To—	Distance.	No. of trips daily, except Sunday.	No. of trips on Sunday.	Total number of trips a week.	Running time allowed.
		<i>Miles.</i>				<i>Min.</i>
West Chicago St. Ry. (Junction Madison and State streets).	Chicago City Ry. (Junction Madison and Wabash ave- nues) .....	0.08	1	5	71	
Chicago City Ry. (Junction Madison and Wabash ave- nues).	West Chicago St. Ry. (Junction Madison and State streets)..	0.08	1	5	71	

Very respectfully,

G. F. STONE,

*Acting Second Assistant P. M. General.*

Mr. W. Weighel,

Care of E. J. Travis,

No. 90 W. Congress St., Chicago, Ill.

(Sufficiently covered by Finding IV.)

156 IX. *Amendment to the Amended Petition Filed by Leave of Court April 12, 1919.*

In the Court of Claims of the United States.

No. 22532.

CHARLES F. HUNT, Executor of the Estate of William Weighel,  
Deceased, Substituted Claimant,

VS.

THE UNITED STATES.

*Amendment to the Amended Petition Filed June 11, 1918.*

(Filed April 12, 1919.)

To the Honorable the Court of Claims:

The court having ordered that claimant's amended petition filed June 11, 1918, have annexed thereto a copy of the executed contract involved in this cause, and as explained to the court at the time said order was made, the claimant not being in possession of the said contract, and counsel for the defendants thereupon offering to furnish a certified copy thereof from the files of the Post-Office Department, but having now informed counsel for claimant that such copy cannot be so furnished, and the court having ordered on April 7, 1919, that claimant add to his said amended petition an extract from the report of the Post-Office Department contained in the record in relation to said executed contract, in compliance therewith claimant hereby adds said extract from pages 108 to 117, inclusive, of the record, as exhibit G hereby attached to his said amended petition, beginning at page 47a thereof.

CHARLES F. HUNT,

*Executor,*

By A. R. SERVEN,

*Attorney for Petitioner.*

SERVEN &amp; JOYCE,

1422 F St. N. W., Washington, D. C.,

*Attorneys for Petitioner.*

DISTRICT OF COLUMBIA,

*City of Washington, ss:*

Before me, the undersigned, a notary public, in and for the said District and city, personally appeared A. R. Serven, the attorney for the claimant therein who, being duly authorized to verify the petition, and who being duly sworn, deposes and says that he has read the foregoing statement and schedule G attached, and that said

statement is true and that said schedule G contains a true and correct copy of that part of the printed report of the Post-Office Department from pages 108 to 117, inclusive, of the record herein.

A. R. SERVEN.

Subscribed and sworn to before me this 12 day of April, A. D. 1919.

[SEAL.]

W. B. JAYNES,  
*Notary Public.*

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### EXHIBIT G.

(The following extract from the report of the Postmaster General, will be found at pages 108 to 117, inclusive, of the printed record herein.)

#### *Proposal.*

The undersigned, W. Weighel, whose post-office address is San Francisco, county of San Francisco, State of California, proposes to carry the mails of the United States, subject to all the requirements contained in the advertisement of the Postmaster-General, dated September 15, 1894 (being the advertisement inviting proposals for the covered regulation wagon mail messenger, transfer, and mail station service), from July 1, 1895, to June 30, 1899, on route No. 235001, between the post-office at Chicago, Ill., and the railroad stations, between said post-office and the steamboat landings, between said post-office and the mail stations, and also between the several railroad stations, steamboat landings, and mail stations, in the covered regulation wagons prescribed by the Department, for the sum of seventy-two thousand four hundred dollars per annum; and if this proposal is accepted he will enter into contract, with sureties to be approved by the Postmaster-General, within thirty days from the date of acceptance.

This proposal is made after due inquiry into, and with full knowledge of, all particulars in reference to the service; and, also, after careful examination of the conditions attached to the advertisement, and with the intent to be governed thereby.

Dated November 26, 1894.

W. WEIGHEL,  
*Bidder.*

159 *Oath Required by Section 245 of an Act of Congress Approved June 23, 1874, to be Affixed to Each Bid for Carrying the Mail, and to be Taken Before an Officer Qualified to Administer Oaths.*

I, W. Weighel, of San Francisco, California, bidder for carrying the mail on the covered regulation wagon mail messenger, transfer and mail station route No. 235001, between the post-office at Chicago, Ill., and the railroad stations between said post-office and the steamboat landings, between said post-office and the mail stations, and also

between the several railroad stations, steamboat landings, and mail stations, as above, do swear that I have the ability, pecuniarily, to fulfill my obligation as such bidder; that the bid is made in good faith and with the intention to enter into contract and perform the service in case said bid shall be accepted.

W. WEIGHEL,  
*Bidder.*

Sworn to and subscribed before me, a notary public for the city and county of San Francisco, California, this 26th day of November, A. D. 1894, and in testimony thereof I hereunto subscribe my name and affix my official seal the day and year aforesaid.

GEO. T. KNOX, [SEAL.]  
*Notary Public.*

NOTE.—When the oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer.

The proposal must be signed by the bidder or each of the bidders, and the date of signing affixed.

Direct to the "Second Assistant Postmaster-General, Post-Office Department, Washington, D. C.," marked "Proposal for covered regulation wagon mail messenger, transfer, and mail station service, city of —."

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*Bond.**Directions.*

Insert the names of the principal and sureties in full in the body of the bond; also the date. The signatures to the bond should be witnessed, and the certificate on the inside, if signed by a justice of the peace, should be accompanied by a certificate of a clerk of a court of record showing authority of the justice of the peace to act as such, or, if signed by a notary public, he should affix his seal.

Know all men by these presents that W. Weighel, of San Francisco, in the State of California, principal, R. McMurray and A. H. Boomer and H. Wadsworth, of San Francisco, in the State of California, as sureties, are held and firmly bound unto the United States of America in the just and full sum of one hundred thousand dollars, lawful money of the United States, to be paid to the said United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of November, 1894.

Whereas by an act of Congress approved June 23, 1874, entitled "An act making appropriations for the service of the Post-Office

Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-five, and for other purposes," it is provided "that every proposal for carrying the mail shall be accompanied by the bond of the bidder, with sureties approved by a postmaster," in pursuance whereof, and in compliance with the provisions of said law, this bond is made and executed, subject to all the terms, conditions, and remedies thereon, in the said act provided and prescribed, to accompany the foregoing and annexed proposal of the said W. Weighel, bidder.

Now, the condition of the said obligation is such that if the said W. Weighel, bidder, as aforesaid, shall, within such time after his bid is accepted as the Postmaster-General has prescribed in said advertisement of route No. 235001, to wit, within thirty days from the date of acceptance enter into and file in the Department a  
161 contract with the United States of America, with good and sufficient sureties, to be approved by the Postmaster-General, to perform the service proposed in his said bid, and further shall perform said service according to his contract, then this obligation shall be void; otherwise, to be in full force and obligation in law.

In witness whereof we have hereunto set our hands and seals this 26 day of Nov., 1894.

[Bidder sign here.] W. WEIGHEL. [SEAL.]

[Sureties sign here.] { R. McMURRAY. [SEAL.]  
H. WADSWORTH. [SEAL.]  
A. H. BOOMER. [SEAL.]

Witnesses:

E. B. YOUNG.

R. H. McKENNA.

NOTE.—Any alteration, by erasure or interlineation, of a material part of the foregoing bond will cause it to be rejected, unless it appears by a note or memorandum, attested by the witnesses, that the alteration was made before the bond was signed and sealed.

When partners are parties to the bond, the partnership name should not be used, but each partner should sign his individual name.

A married woman will not be accepted as surety. Sureties are liable during the whole of contract term.

### Interrogatories.

The following interrogatories are prescribed by the Postmaster-General, to be answered, under oath, by each of the sureties in the foregoing bond, and no bid will be considered in which these interrogatories are not fully and satisfactorily answered:

1. What amount in value of real estate is owned by you?
2. Of what description—town or city lots, improved or unimproved, or farming land, cultivated or uncultivated?
3. Where is it situated—county and State?

4. In what county and State does record evidence of your title exist? (Answer fully on next page.)

Especial attention is called to the interrogatories to be answered fully below. The value, description, location, and place of  
162 record of real estate of each surety must be stated as required by the interrogatories; "ditto," "do," or ditto marks should not be used.

*Oath of Sureties.*

STATE OF CALIFORNIA,

*County of San Francisco, ss:*

On this 26th day of November, 1894, personally appeared before me R. McMurray, A. H. Boomer, and H. Wadsworth, sureties in the foregoing bond, to me known to be the persons named in said bond as sureties, and who have executed the same as such, who, being by me duly sworn, depose and say, and each for himself deposes and says, he has executed the within bond; that his place of residence is correctly stated therein; that he is the owner of real estate worth the sum hereinafter set against his name over and above all debts due and owing by him, and all judgments, mortgages, and executions against him after allowing all exemptions of every character whatever, the total sum thus assured amounting to (\$200,000) two hundred thousand dollars, being double the amount of the foregoing bond.

And in answer to the foregoing interrogatories, each of the said sureties further deposes and says that the value, description, and location, and place of record evidence of title of his real estate is as follows:

Names of sureties.	Value of real estate.	Description of real estate. (Answer to in- terrogatory No. 2.)	County and State where located. (Answer to interrogatory No. 3.)	County and State where record evidence of title is. (Answer to interrogatory No. 4.)
R. McMurray.....	\$100,000	Improved city lots.....	San Francisco, Cal- ifornia.	San Francisco, Cal- ifornia.
H. Wadsworth.....	50,000	Unimproved and im- proved land consist- ing of city lots.	San Francisco and Alameda, Cal.	San Francisco and Oakland, Alameda Co., California.
A. H. Boomer.....	\$50,000	Unimproved and im- proved real estate consisting of city lots.	San Francisco, Cal., and Ada Co., Idaho.	San Francisco, Cal., and Boise City, in Ada Co., Idaho.

R. McMURRAY.  
 H. WADSWORTH.  
 A. H. BOOMER.

Sureties  
 Sign here.

Subscribed and sworn to before me this 26th day of November 1894.

[SEAL.]

GEO. T. KNOX,  
Notary Public.

163 NOTE.—When the above oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer. If the oath is taken before a notary public and his seal is affixed, the certificate of the clerk of a court is not necessary.

*Certificate of Postmaster.*

I, the undersigned, postmaster at San Francisco, State of California, after the exercise of due diligence to inform myself of the pecuniary ability and responsibility of the principal and his sureties in the foregoing bond, and of the real estate owned by them respectively, do hereby approve said bond, and certify that, in my belief the said sureties are sufficient—sufficient to insure the payment of double the entire amount of the said bond; and I do further certify that the said bond was duly signed by W. Weighel, bidder, and R. McMurray, A. H. Boomer, and H. Wadsworth, his sureties before signing this certificate.

FRANK McCOPPIN,  
Postmaster.

Dated November 26, 1894.

Postmasters will observe that the improper approval of the bond or the certificate of the sufficiency of sureties therein, exposes them not only to dismissal but also to fine or imprisonment.—Sec. 735 Postal Laws and Regulations, 1893. The approval of the sureties must be by a postmaster, and not by an assistant postmaster, or other substitute, either in his own name or in the name of the postmaster.

(Indorsed:) Covered regulation wagon mail-messenger, transfer and mail station service. Route No. 235001. City of Chicago, Ills. (Advertisement of September 15, 1894.) (July 1, 1895, to June 30, 1899.) Proposal of W. Weighel. \$72,400. Indorsed and examined by W. A. D., Dec. 7, 1894. Recorded by W. A. D., Dec. 7, 1894. [Bidders will write nothing whatever on this face.]

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Post-Office Department,

Office of the Second Assistant Postmaster-General.

Washington, D. C., December 21, 1894.

Ordered (No. 29613):

That the proposals from the following-named persons and partnerships for the covered regulation wagon mail-messenger, transfer



ber and mail-station service, under the advertisement of September 15, 1894, for the period from July 1, 1895, to June 30, 1899, on the routes and at the compensations hereinafter set forth, be accepted; and that contracts be made with the several persons and partnerships, respectively, for the service to be performed on the several routes during the term before mentioned, and at the compensations respectively named; the contracts to be approved by the Postmaster-General and delivered at the office of the Second Assistant Postmaster-General on or before January 20, 1895:

Route.	City and State.	Accepted bidder.	Annual pay.
235001	Chicago, Illinois.....	W. Weighel.....	\$72,400

W. S. BISSELL,  
Postmaster-General.

(Form No. 2605.)

#### Contract for Mail Service.

Covered Regulation Wagon Mail Messenger, Transfer, and Mail Station Service in the City of Chicago, Ill.

Route No. 235001.

Annual rate of pay, \$72,400.00.

Contractor's address: San Francisco, San Francisco Co., State of Cal.

This article of contract, made the 21 day of December, eighteen hundred and ninety-four, between the United States of America (acting in this behalf by the Postmaster-General) and W. Weighel, contractor, and A. H. Boomer, and H. Wadsworth, and R. McMurray, all of San Francisco, Cal., as his sureties:

Witnesseth, that whereas W. Weighel has been accepted as contractor for transporting the mails on route No. 235001, being the covered regulation wagon mail messenger, transfer, and mail station service at the city of Chicago, Ill., under an advertisement issued by the Postmaster-General on the 15 day of September, 1894, for such service, which advertisement is hereby referred to, and made by such reference a part of this contract, and for performing all new or additional service of said kinds which may at any time during the term of this contract be required in said city, at seventy-two thousand four hundred dollars per year, for and during the term beginning the first day of July, 1895, and ending June 30, 1899:

Now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

First. To carry said mail, using therefor wagons of the kind hereinafter described in sufficient number to transport the whole of said mail, whatever may be its size, weight, or increase during the term of this contract, and within the time fixed in the pamphlet advertisement of the Postmaster-General dated September 15, 1894; and so to carry until said schedule is altered by the authority of the Postmaster-General, as herein provided, and then to carry according to such altered schedule; to carry said mails in a safe and secure manner, free from wet or other injury, in substantial one or two horse wagons of sufficient capacity for the entire mail; the wagons to be employed in the performance of the service to be built with closed bodies and in accordance with the plans and specifications adopted by the Postmaster-General September 1, 1894, which plans and specifications are hereby referred to and made by such reference a part of this contract. All equipment to be kept clean, the wagons to be frequently washed and kept painted and varnished in a thorough manner. The locks to be used to be similar in make and pattern to those on exhibition at the office of the Second Assistant Postmaster-General, the mechanism of the lock to be such as to give ample security to the mails. The painting, as to colors, ornaments, and design, both on running gear and body, shall conform to the painting and ornamenting shown in the colored drawings on exhibition at the office of the Second Assistant Postmaster-General.

166 at Washington, D. C. The Postmaster-General reserves the right to vary at any time, when in his judgment the service may require it, the plan and form of wagons to be used in the service, provided the changes in plan and form of wagons do not involve the discontinuance of the wagons then in use, and approved by him.

Second. To take the mail from, and deliver it into, the post-offices, mail stations and cars at such points, and at such hours, under the directions of the postmaster at Chicago, Ill., approved by the Postmaster-General, as will secure dispatches and connections and facilitate distribution, and at the contractor's expense for tolls and ferriage.

Third. To furnish the number of regulation wagons that, in the opinion of the postmaster at Chicago, Ill., will be sufficient for the prompt and proper performance of the service, including extra wagons to take the place of those that may be temporarily unserviceable, delayed waiting for trains, or withdrawn from service for repairs.

Fourth. To be accountable and answerable in damages to the United States, or any person aggrieved, for the faithful performance by the said contractor of all the duties and obligations herein assumed, or which are now or may hereafter be imposed upon him by law in this behalf; and, further, to be so answerable and accountable in damages for the careful and faithful conduct of the person or persons who may be employed by said contractor and to whom the said contractor shall commit the care and transportation of the mails, and for the faithful performance of the duties which are or may be by law imposed upon such person or persons in the care and trans-

portation of said mails; and, further, that said contractor shall not commit the care and transportation of the mail to any person under sixteen years of age, nor to any person not of good moral character, or who has not taken the oath prescribed by law, or who can not read and write the English language. Each driver shall wear when on duty the prescribed cap or hat described in the pamphlet advertisement of September 15, 1894.

Fifth. To discharge any driver, or other person employed in performing mail service, wherever required by the Postmaster-General so to do; not to transmit by themselves, or any of them, or any of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail.

167 Sixth. To account for and pay over any money belonging to the United States which may come into the possession of the contractor, his sureties, or employes.

Seventh. That foreign mails in transit across the territory of the United States shall, within the meaning of this contract, be deemed and taken to be mails of the United States.

Eighth. To carry post-office blanks, mail locks, and mail bags, and all other postal supplies.

Ninth. To convey, whenever requested so to do, one railway post-office clerk, a substitute, or a messenger, on the driver's seat of each wagon.

Tenth. To perform all new or additional or changed covered regulation wagon mail messenger, transfer, and mail station service that the Postmaster-General may order at the city of Chicago, Ill., during the contract term, without additional compensation, whether caused by change of location of post-office, stations, landing, or the establishment of others than those existing at the date hereof, or rendered necessary, in the judgment of the Postmaster-General, for any cause, and to furnish such advance wagons or extra wagons from time to time for special or advance trips as the Postmaster-General may require, as a part of such new or additional service.

For which service, when properly performed, and the evidence thereof shall have been filed in the office of the Second Assistant Postmaster-General, the said W. Weighel, contractor, is to be paid by the United States the sum of seventy-two thousand four hundred dollars a year, to wit: Quarterly, in the months of November, February, May, and August, through the postmaster at the city of Chicago, Ill., or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended and withheld in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may change the schedule and termini of the route, vary the routes, increase, decrease, or extend the

service thereon, without change of pay; and that the Postmaster-General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance; but for a total discontinuance of service the contractor shall be allowed one month's extra pay as full indemnity.

168 And it is further stipulated and agreed, that for a failure to deliver not beyond the control of the contractor, or for any delay or interference with the prompt delivery of the mail at the post-office, mail stations, depots, and landings, or for carrying the mail in a manner different or inferior to that hereinbefore specified; for suffering the mail to be wet, injured, lost, or destroyed; or for any other delinquency or omission of duty under this contract; for all or any of which the contractor shall forfeit, and there may be withheld from his pay, such sum as the Postmaster-General may impose as fines or deductions, according to the nature and frequency of the failure or delinquency.

And it is further stipulated and agreed, that the Postmaster-General may annul this contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier or any other person employed in the performance of service, when required by the Department; for transmitting commercial intelligence or matter that should go by mail, contrary to the stipulations herein; for transporting persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service can not be safely performed, the revenues collected, or the laws maintained.

And it is further stipulated and agreed, that such annulment shall not impair the right of the United States to claim damages from said contractor and his sureties under this contract; but such damages may, for the purpose of set-off or counterclaim, in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby further stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or another contractor shall be made by the Postmaster-General.

And it is further stipulated, that no Member of, or Delegate to, Congress shall be admitted to any share or part of this contract, or to any benefit to arise therefrom.

169 And this contract is further to be subject to all the conditions imposed by law and the several acts of Congress relating to post-offices and post roads.

In witness whereof, the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has caused the same to be attested by the signature of the Second Assistant Post-

master-General, in accordance with the act of Congress approved March 3, 1877 (sec. 3, 19 Stats., p. 335), and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

By order of the Postmaster-General: C. NEILSON,  
Second Assistant Postmaster-General.

Signed, sealed, and delivered by the Second Assistant Postmaster-General in the presence of—

J. T. CALLAGHAN.

Signed this 15th day of Feby, 1895.

And by the other parties hereto in the presence of—

W. P. HASSELL,

E. B. YOUNG,

*Witnesses.*

Signed this 4th day of Jan'y, 1895.

W. WEIGHEL, [SEAL.]  
Contractor.

Signed this 17th day of January, 1895.

A. H. BOOMER, [SEAL.]

Signed this 17th day of January, 1895.

H. WADSWORTH, [SEAL.]

Signed this 17th day of January, 1895.

R. McMURRAY, [SEAL.]

} *Sureties.*

Post-Office at San Francisco, Cal.,  
January 19th, 1895.

I hereby certify that I am acquainted with A. H. Boomer, and H. Wadsworth, and R. McMurray, all of San Francisco, Cal., and the condition of their property, and that, after full investigation and inquiry, I am satisfied that they are good and sufficient sureties for the amount in the foregoing contract.

FRANK MCCOPPIN, *Postmaster.*

NOTE.—This certificate must be signed by a postmaster and not by any other person.

IMPORTANT.—The oath on the next page must be taken by the contractor.

*Certificate of the Oath of Mail Contractors and Carriers.*

Required by Act of Congress of March 5, 1874.

☞ (Take this oath after signing the foregoing contract.)

I, W. Weighel, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 235001, being cov-

ered regulation wagon mail messenger, transfer, and mail station service at Chicago, State of Ill., do solemnly swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control. And I also further swear that I will support the Constitution of the United States: So help me God.

W. WEIGHEL,  
*Contractor.*

COUNTY OF SAN FRANCISCO,  
*State of California, ss:*

Sworn before the subscriber, a notary public at San Francisco, the county and State aforesaid, this 19th day of January, A. D. 1895, and I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

[SEAL.]


GEO. T. KNOX,  
*Notary Public in and for the City and County  
of San Francisco, State of California.*

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*Oath of Sureties.*

NOTE.—A postmaster is not qualified to administer this oath.

STATE OF ———,  
*County of ———, ss:*

Personally appeared before me this day the sureties in the foregoing contract, to me known to be the persons named in said contract as sureties, and who have executed the same as such, who, being by me duly sworn, depose and say, and each for himself deposes and says, he has executed the within contract; that his place of residence is correctly stated therein; that he is the owner of real estate worth the sum named in said contract over and above all debts due and owing by him, and all judgments, mortgages, and executions against him after allowing all exemptions of every character whatever.  And also over and above the amount of any and all other contracts for carrying the mail which he has executed as surety, and which have not heretofore expired, the total sum thus assured amounting to double the amount of the foregoing contract.

Sureties sign here.

{  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me this — day of ———, 189—,  
\_\_\_\_\_, [L. S.]  
\_\_\_\_\_

NOTE.—When either of the above oaths is taken before a justice of the peace or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly qualified as such officer. If the oath is taken before a notary public and his seal is affixed, the certificate of the clerk of the court is not necessary.

171 X. *Argument and Submission of Case.*

On December 9, 1919, this case was argued and submitted by Messrs. A. R. Serven and Albert C. Travis, for the claimant, and Messrs. George M. Anderson and Joseph Stewart, for the defendants.

It was agreed by Counsel, that Judge Downey, who was absent at the argument of the case should participate in the decision of the Court.

172 XI. *Findings of Fact, Conclusions of Law, and Opinion of the Court by Hay, J.*

Entered January 26, 1920.

Court of Claims of the United States.

No. 22532.

(Decided January 26, 1920.)

Deceased,

CHARLES F. HUNT, Executor of the Estate of William Weighel,

v.

THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

On September 15, 1894, the Postmaster General of the United States had published an advertisement inviting proposals for the performance of covered regulation mail messenger, transfer, and mail station service in Chicago, Ill., on mail route No. 235001 for the period from the 1st day of July, 1895, to the 30th day of June, 1899; the parts of said advertisement relating to said route, including instructions to bidders, are set out in Exhibit A attached to and made a part of the plaintiff's amended petition. Pursuant to said advertisement, the plaintiff's decedent (William Weighel) submitted a proposal for the performance of the service described in said ad-



vertisement for the sum of \$72,400 per annum. The bid of the plaintiff was accepted, and on the 17th day of January, 1895, the plaintiff and the defendants entered into a contract in writing for the performance of said service, a copy of which contract is attached to the amendment of the plaintiff's amended petition, and is made a part of this finding by reference. On February 6, 1895, William Weighel the aforesaid contractor, entered into a subcontract with one Ezra J. Travis, by which contract the said Travis agreed for the sum of \$70,000 per annum to carry the United States mail on route No. 235001 in the city of Chicago, relieving the said Weighel of the labor and responsibility of his contract. The said Travis bound himself in the sum of \$100,000 to assume all liability of fines and deductions which might be imposed on said Weighel under his contract for failure and delinquencies in the performance of the service on said route. The said Travis performed all the mail service under the contract, and the extra service, to recover which this suit was brought. The said Weighel had nothing further to do with the performance of said contract; the said Weighel turned over to the said Travis the sum of \$72,400 per annum which was paid to said Weighel by the defendants, and received from Travis the sum of \$2,400 per annum.

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## II.

At the time the plaintiff's decedent bid on this route no mail service in the city of Chicago was being performed to and from the street cars by contractors who were performing the same mail service which was bid for by the plaintiff's decedent, nor did the proposal of the defendants for mail service on this route mention service to and from street cars, although the proposal to bidders published by the defendants for the period beginning July 1, 1899, did mention specifically electric and cable cars. The plaintiff's decedent, through his agent, was informed by the postmaster at Chicago, who was authorized by the Postmaster General of the United States to give information to bidders, that the bidder obtaining the contract for the performance of mail service on route 235001 for the period set out in Finding I would not be required to perform mail service to and from street cars.

## III.

During the period covered by the contract the subcontractor, Travis, performed the service described and referred to in the advertisement and covered by the contract, for which service he has been paid the amount specified in said contract. He also performed new and additional service of the same kind and character for which he asks no additional compensation. The last-mentioned service was occasioned by a change of the location of the general post office in Chicago and by the establishment of certain mail stations and substations.



## IV.

Under the dates of November 14, 1895, May 12, 1896, February 27, 1897, and May 3, 1897, the Postmaster General issued orders requiring the contractor to perform mail service to and from street cars in the city of Chicago. As a result of these orders the subcontractor had to make to and from street cars 523,276 trips. These orders are made a part of the petition. The service required by these orders was performed under protest, and the contractor notified the defendants that compensation therefor would be demanded.

The service required by the aforesaid orders entailed 25,550 days' work for one man; and after the service required by said orders began the subcontractor was obliged to employ 24 men, 4 double vans, and 7 single wagons to perform the service, which had been previously performed by 4 drivers and 4 single wagons. The fair and reasonable value of the service rendered by the subcontractor and his agents in the making of the trips imposed upon him by the orders of the Postmaster General to and from street cars was \$52,327.60. The subcontractor, Travis, has never received anything for the extra service performed.

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## VI.

Both the postmaster at Chicago and the Second Assistant Postmaster-General of the United States were informed that Weighel had sublet the contract aforesaid to Travis. Travis was recognized by the Post Office Department as subcontractor, although no copy of the subcontract was filed with the Second Assistant Postmaster General as required by law, the said Travis having informed that official under date of October 4, 1895, that his subcontract with Weighel "is not intended to be filed for recognition by the Department, or as a lien against the pay of the contractor." Notwithstanding this, the Second Assistant Postmaster General recognized the said Travis as subcontractor, and, under date of August 23, 1899, wrote him that the sum of \$55.50 "will be deducted from your pay as subcontractor on said route, in accordance with the terms of your subcontract."

## VII.

On April 18, 1901, William Weighel, filed a petition in this court; and on August 6, 1907, the said Travis filed an amended petition in this suit in his own right, substituting himself as plaintiff. In this petition Travis stated that he had performed the extra service set out by Weighel in his petition. The petition of Travis was dismissed on the ground that his claim was barred by the statute of limitations. Whereupon Weighel's executor amended the petition of April 18, 1901, and upon that amended petition and the evidence taken in the case this suit now comes up for trial.

## Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and that his petition should be and the same is hereby dismissed. Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this case, the amount thereof to be entered by the chief clerk and collected by him in the manner prescribed by law.

## Opinion.

HAY, Judge, delivered the opinion of the court:

This is a suit brought by the executor of the estate of William Weighel, deceased, for the sum of \$52,327.60. On the 17th day of January, 1895, William Weighel entered into a contract with the Postmaster General of the United States to perform covered regulation mail messenger, transfer, and mail station service in Chicago, Ill., on mail route No. 235001 for the period from the 1st day of July, 1895, to the 30th day of June, 1899. Among other things the contract provided: "To carry said mail, using therefor wagons of the kind hereinafter described in sufficient number to transport the whole of said mail, whatever may be its size, weight, or increase during the term of this contract \* \* \* and so to carry until said schedule is altered by the authority of the Postmaster General" \* \* \* and

175 "to perform all new or additional or changed covered regulation wagon mail messenger, transfer, and mail station service that the Postmaster General may order at the city of Chicago, Ill., during the contract term, without additional compensation, whether caused by change of location of post office, stations, landing, or the establishment of others than those existing at the date hereof, or rendered necessary, in the judgment of the Postmaster General, for any cause, and to furnish such advance wagons from time to time for special or advance trips as the Postmaster General may require, as a part of such new or additional service." And the contract further provided: "It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster General may change the schedule and termini of the route, vary the routes, increase, decrease, or extend the service thereon, without change of pay; and that the Postmaster General may discontinue the entire service whenever the public interest, in his judgment, shall require such discontinuance."

At the time the contractor Weighel bid on this route, and entered into the contract with the Government, no mail service in the city of Chicago was being performed to and from street cars by contractors who were performing the same mail service which was bid for by the said contractor, nor did the proposal of the defendants for mail service on this route mention service to and from street cars, although the proposal to bidders published by the defendants for the period beginning July 1, 1899, did mention specifically electric and cable

cars. The aforesaid contractor, through his agent, was informed by the postmaster of Chicago, who was authorized by the Postmaster General of the United States to give information to bidders, that the bidder obtaining the contract for the performance of mail service on route 235001 for the period set out in Finding I would not be required to perform mail service to and from street cars.

During the period covered by the contract, the subcontractor performed the service required by the contract, and all new and additional service of the kind and character referred to in the advertisement and the contract for this service the subcontractor has been paid.

Under orders issued by the Postmaster General, which orders are set out in the findings, the subcontractor was required to perform mail service to and from street cars in the city of Chicago. As a result of these orders the subcontractor had to make to and from street cars 523,276 trips, and was obliged to employ 24 men, 4 double vans, and 7 single wagons to perform the service, which had been previously performed by 4 drivers and 4 single wagons, all of which greatly increased the expense of the service, and imposed upon him duties and undertakings which were not contemplated in the contract. The value of the service rendered by the subcontractor in the making of the trips imposed upon him by the orders of the Postmaster General to and from street cars was \$52,327.60, no part of which amount has been paid to the subcontractor nor to anyone else. The service was performed under protest, and the contractor notified the defendants that compensation therefor would be demanded. The Government contends that the Postmaster General under the authority conferred upon him by the contract in this case had a right to require the contractor to render new or additional mail messenger or transfer service, and that the trips to and from street cars was such new and additional service was provided for in the contract. We do  
 176 not think so. The service required was of an entirely different nature from that described in the contract, imposed upon the contractor very great burdens, and involved him in great expense which he could not have foreseen or guarded against when he entered into the contract.

We think this case is governed by the principles laid down by the Supreme Court of the United States in the case of *United States v. Stage Company*, 199 U. S. 414, 422, 423, and if the plaintiff's decedent in this case had performed the services for which he brings suit, we would not hesitate to render a judgment in his favor. But it appears from the evidence in this case that Weighel the contractor, on February 6, 1895, sublet his contract to one Travis, who agreed to perform all the service which was required of Weighel by his contract with the Government. Travis complied with the terms of his subcontract; he also performed all the service under Weighel's contract with the department, and was recognized by the department subcontractor. Weighel had no further interest in the contract, except that he paid over to Travis the sum of \$72,400 per annum, which the Government paid him as the original contractor. The

trips which were made to and from the street cars were made by Travis, the expense- imposed by reason of these trips were paid by Travis; all this extra service, which is the subject of this suit, was performed by Travis, the subcontractor. It was not claimed by Weighel, nor does his personal representative claim, that Weighel performed this extra service.

It is unfortunate that Travis did not sue in his own name, or that Weighel did not sue for the benefit of Travis. After the suit brought by Weighel had been pending in this court for over six years, it seems to have occurred to Travis that Weighel did not have a cause of action, and he therefore undertook to sue in his own name, but it was held that he was too late, that he was barred by the statute of limitations, and his suit had to be dismissed. Had he brought his suit in time, or if Weighel had sued for his benefit in the first place, it is difficult to perceive how he could have been defeated. As the matter stands, it clearly appears that Weighel has no interest in the subject matter of this suit; therefore his executor can not maintain it, and his petition must be dismissed.

Graham, Judge, Downey, Judge, Booth, Judge, and Campbell, Chief Justice, concur.

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## XII. *Judgment of the Court.*

At a Court of Claims, held in the City of Washington, on the 26th day of January, A. D., 1920, judgment was ordered to be entered as follows: The Court, upon the consideration of the premises, find in favor of the defendants and it is ordered, adjudged and decreed that Charles F. Hunt, Executor of the estate of William Weighel, Deceased, as aforesaid, is not entitled to recover and shall not have a recovery of any sum in this action from the United States; and that the petition herein be and it is hereby dismissed; and it is further ordered, adjudged and decreed that the United States shall have a recovery of and from Charles F. Hunt, Executor of the estate of William Weighel, Deceased, as aforesaid, the sum of fifty-three dollars and twenty-two cents (\$53.22), the cost of printing the record in this cause in this court, to be collected by the Clerk as provided by law.

By THE COURT.

## 178 XIII. *Claimant's Application for an Allowance of an Appeal.*

Comes now the claimant, by his attorneys, in the above entitled cause and prays this Honorable Court that an appeal be granted therein to the Supreme Court of the United States.

CHARLES F. HUNT,

*Executor,*

By A. R. SERVEN,

*His Attorney.*

Filed April 12, 1920.

Ordered: That the above appeal be allowed as prayed for.  
By THE COURT.

Apr. 19, 1920.

Court of Claims.

No. 22432.

CHARLES F. HUNT, Executor of the Estate of William Weighel,  
Deceased,

VS.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above entitled cause; of the opinion of the Court on demurrer by Barney, J., of the argument and submission of the cause; of the findings of fact; conclusion of law; opinion of the Court by Hay, J.; of the judgment; of the application of the claimant for and the allowance of an appeal to the Supreme Court of the United States.

179 In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington City, this twenty-third day of April, A. D., 1920.

[Seal of the Court.]

(Signed)

F. C. KLEINSCHMIDT,  
*Assistant Clerk, Court of Claims.*

180 Supreme Court of the United States.

No. —.

CHARLES F. HUNT, Executor of the Estate of William Weighel,  
Deceased, Appellant,

VS.

THE UNITED STATES.

Appeal from the Court of Claims.

*Stipulation.*

It is stipulated and agreed between the parties hereto by their attorneys that the several parts of the record certified to the Supreme Court by the Court of Claims herein which are crossed out, in blue pencil, in the attached copy, are unnecessary for the proper understanding of the case by the Supreme Court, and that the record hereto attached contains all that is necessary for a proper understanding of the issues involved herein and that the same may be printed as the record on appeal in this case.

It is further stipulated and agreed that either party hereto may print in his brief, or briefs, filed herein any part of the record filed by the Court of Claims herein, provided, that notice of intention so to do is given to the other party within three months from 181 - date hereof and that if the party so served with notice desires to incorporate other parts of the record aforesaid, he may do so, provided, notice is given within thirty days after service of the first notice above mentioned.

BURT E. BARLOW,  
*Attorneys for Appellee.*

JOSEPH STEWART,  
*Attorneys for Appellee,*  
*Special Assistant to the Attorney General.*

Dated: August 3, 1920.

[Endorsed:] File No. 27,636. Supreme Court U. S., October Term, 1920. Term No. 313. Charles F. Hunt, executor, &c., appellant, vs. The United States. Agreed record. Filed August 4, 1920.

(2461)